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**FMC Idaho LLC, Pocatello, Idaho**

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**FMC OU REMEDIAL DESIGN  
DRAFT INSTITUTIONAL  
CONTROL IMPLEMENTATION  
AND ASSURANCE PLAN**

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March 2014  
Revised January 2015

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## 1.0 INTRODUCTION

This Institutional Control Implementation and Assurance Plan (ICIAP) describes the plan to implement, maintain, and monitor institutional controls (ICs) at the FMC Operable Unit (OU) of the Eastern Michaud Flats (EMF) Superfund Site. The ICs described herein are intended to protect the integrity of the remedy and to preclude future uses at the FMC OU Site that would result in unacceptable risks from exposure to contaminants in accordance with the Interim Amendment to the Record of Decision for the EMF Superfund Site FMC Operable Unit (IRODA; EPA 2012a) that was issued by the U.S. Environmental Protection Agency (EPA) Region 10 on September 27, 2012 and the Unilateral Administrative Order to FMC for Remedial Design and Remedial Action (RD/RA), EPA Docket No. CERCLA-10-2013-0116 (UAO; EPA 2013a), that became effective on June 20, 2013.

EPA defines ICs as “non-engineered instruments, such as administrative and legal controls, that help to minimize the potential for exposure to contamination and/or protect the integrity of a response action (EPA, 2012b).” ICs are a subset of Land Use Controls (LUCs). LUCs include engineering and physical barriers, such as fences, as well as ICs. The selected remedy described in the IRODA (EPA, 2012a) specifies the LUCs to provide for protection of human health and integrity of the remedy.

ICs assist in achieving Remedial Action Objectives (RAOs) by: 1) limiting land or groundwater use/access, and 2) providing information that helps modify or guide human behavior at locations where use and access restrictions are necessary. For example, the selected remedy for the FMC OU includes engineered caps to cover contaminated soils and ICs (e.g., excavation prohibitions) and access restrictions (e.g., fencing). EPA generally divides the types of ICs available into four general categories:

- 1) Governmental controls (e.g., zoning, local ordinances);
- 2) Proprietary controls (e.g., easements, restrictive covenants);
- 3) Enforcement and permit tools (e.g., consent decrees, administrative orders); and,
- 4) Informational tools (e.g., notices filed in the land records, advisories).

This ICIAP is a dynamic document that will be updated based on EPA comments on this draft plan, and will be revised as necessary as the remedial design (RD) and remedial action (RA) progress. Many of the details for the ICs required at the FMC OU will be determined during the RD process, which is currently underway. Final surveys of remediated areas that will be subject to ICs will be conducted upon completion of RA construction.



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The ICIAP will be finalized upon completion of the RA. The ICs that are implemented pursuant to this ICIAP may be modified over time following implementation of the RA based on post-RA monitoring.

This ICIAP has been prepared in accordance with EPA guidance regarding development, implementation, monitoring and enforcement of ICs (EPA 2012b; EPA 2012c; EPA 2013b). Because most of the FMC OU is located within the exterior boundaries of the Fort Hall Indian Reservation, the guidance consulted in development of this document included *Implementing Institutional Controls in Indian Country*, issued by the EPA Office of Site Remediation Enforcement, Office of Enforcement and Compliance Assurance, in November 2013 (EPA 2013b). That guidance focuses on BIA-administered trust lands and other lands owned or controlled by Tribes or Tribal members, and does not specify any additional IC requirements that must be met by non-Tribal member owners of fee property within Indian reservations such as the FMC OU property. That guidance therefore did not provide an independent basis for the provisions of this ICIAP.

## **2.0 SITE DETAILS**

### **2.1 SITE DESCRIPTION**

The FMC OU, which includes the former plant process areas, other areas related to the plant operation, and adjacent FMC-owned properties, occupies approximately 1,450 acres in Power County, Idaho on privately-owned fee land, most of which is located within the exterior boundaries of the Fort Hall Indian Reservation (see Figure 1).

The FMC elemental phosphorus facility, occupying most of the property that FMC owns south of Highway 30 near Pocatello and referred to as the “FMC Plant Site,” ceased production in December 2001. From 2002 through 2006, the facility was decommissioned and its infrastructure was demolished to ground level. The FMC facility operated essentially continuously from 1949 (prior to that time the site was primarily in agricultural use) through 2001.

### **2.2 BRIEF SITE HISTORY**

The FMC facility produced elemental phosphorus from phosphate-bearing shale ore mined regionally. The shale, combined with coke and silica, was fed into four electric arc furnaces located in the furnace building. The furnace reaction primarily yielded gaseous elemental phosphorus, carbon monoxide gas, slag, and ferrophos (FeP). The elemental phosphorus gas was subsequently condensed to a liquid state and stored in sumps and tanks prior to shipment off-site as product. Elemental phosphorus will burn upon contact with air. Therefore, to prevent oxidation, the condensed phosphorus product was kept covered with water from the time it was produced through loading and transport off-site.

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Some feed stocks, byproducts (including air emissions) and products of historical operations at the FMC Plant Site contain elevated levels of constituents of potential concern (primarily metals and radionuclides). Historical management of these materials has resulted in impacts to soils and shallow groundwater at the FMC Plant OU. In addition, downgradient discharge of shallow groundwater from beneath the FMC Plant OU into the Portneuf River has contributed to the impairment of surface water quality in the Off-Plant OU; however, based on mass loading calculations performed by Simplot (Simplot, 2012 and Simplot, 2013), it is estimated that FMC-impacted groundwater migrating downgradient from the FMC Plant Site northern boundary accounts for less than 5 percent of the total mass load of EMF Site contaminants migrating to the river (i.e., Simplot is the predominant source of contamination to the river).

### 2.2.1 Regulatory History

Investigation, design, and ultimately remediation of the Site is progressing through the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) process. The EPA placed the EMF Site on the National Priorities List (NPL) in 1990. FMC and Simplot prepared a Remedial Investigation (RI) in 1996 and a Feasibility Study (FS) in 1997 for the overall EMF Site (Bechtel, 1996 and 1997), including the FMC Subarea (now identified as the FMC OU). The RI/FS process included a risk assessment, which evaluated human health and ecological risks related to Site conditions (EPA, 1995a and 1995b). The FS evaluated various technologies and remedial alternatives (including ICs) to reduce or eliminate these risks.

FMC ceased production of elemental phosphorus from phosphate ore at its Pocatello facility in December 2001. This led EPA and FMC to enter into an Administrative Order on Consent (AOC) in October 2003 for a Supplemental Remedial Investigation (SRI) and Supplemental Feasibility Study (SFS) at the FMC OU. This was driven primarily by EPA's finding that additional investigations and evaluations were needed at the plant areas that had been actively operated at the time of the RI/FS but where operations had terminated with the plant shutdown.

FMC completed the FMC OU *SRI Report* in 2009 and issued an *SRI Addendum Report* in 2010. The *SRI Report* evaluated FMC OU areas not investigated during the RI because of ongoing FMC Plant operations, and also re-evaluated and augmented significant portions of the 1991–1996 RI. Areas north, south, and west of the Former Operations Area were also investigated for impacts from windblown contaminants. Sampling data from the Southern Undeveloped Area (SUA) and Western Undeveloped Area (WUA) and the FMC-owned Northern Properties are presented in the 2010 *SRI Addendum Report*. The data presented in the *SRI Report* and *SRI Addendum Report*, *GWCCR*, and the *EMF RI Report* provide the primary basis for the evaluations presented in the *Supplemental Feasibility Study Report (SFS Report)*; MWH, 2010a) for the FMC OU.

During the SRI/SFS, the impacted areas of the Former Operations Area were divided into 24 remediation units (RUs). An RU was intended to delineate areas analogous to one or more

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RCRA solid waste management units (SWMU) with similar former processes or characteristics (including types of constituents of potential concern) that were typically in the same geographical area. The SRI work plan was framed around investigation of these RUs. Upon completion of the SRI, including additional investigation of the Northern Properties and SUA/WUA the contamination assessment of each RU showed that many have similar characteristics, warranting an evaluation of similar remedial approaches. As the CERCLA process moved into the SFS, the RUs and parcels were combined (or in some cases divided) into new geographical subunits based on remedial action similarities that facilitated the SFS process and remedy selection analyses. These subunits are referred to as *remediation areas* (RA). In general, the RUs were grouped into RAs that are defined based on the following: (1) geographic proximity, (2) similarity of contaminants of concern (COC), (3) types of risks present, and (4) consistency of remedial approach. The RAs at the FMC OU are shown on Figure 2.

The IRODA presents the interim remedy for the Site as selected by EPA. A summary of the IRODA selected remedy is presented below in Section 2.2.4.

On June 10, 2013, EPA Region 10 issued the UAO for RD/RA (EPA 2013) to FMC that became effective on June 20, 2013. The UAO defines the specific actions FMC will undertake to design and implement the selected remedy at the FMC OU in accordance with the IRODA.

### 2.2.2 Contaminants of Concern

The contaminants of concern (COCs) for exposure media identified IRODA are:

- **Surface and Subsurface Soil and Fill Materials:** Metals and radionuclides as specified on Table 1.
- **Groundwater:** Metals and radionuclides as specified on Table 2.

### 2.2.3 Exposure Pathways

The receptors and exposure pathways for the FMC OU as identified in the IRODA are summarized below for the FMC Plant Site, comprised of RAs A through H (Figure 2); the FMC Northern Properties, comprised of RAs I and J (Figure 2) and referred to in the SRIA as Parcels 1 through 6 (Figure 3); and the FMC SUA and WUA (Figure 2).

#### **FMC Plant Site**

Because residential use is not anticipated on the FMC Plant site, and current workers are subject to formal health and safety procedures, the human exposure of concern is future workers. The SRI human health risk assessment (HHRA) evaluated risks to potential future workers for the FMC Plant site. Risks to potential future workers associated with exposure to residual source/fill materials and soil mixed with fill materials were primarily from radium-226 via external exposure via the gamma radiation pathway. In addition, elemental phosphorus in the subsurface within some RAs is a potentially acute hazard if excavated or otherwise disturbed. The elemental

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phosphorus, if exposed to air would combust, causing burns and inhalation hazards from intensely irritating phosphoric acid aerosols with the potential to drift beyond the immediate area.

The SRI found that groundwater contamination at the FMC OU exceeds Safe Drinking Water Maximum Contaminant Levels (MCLs) or risk-based concentrations (RBCs; for COCs for which there are no MCLs). The HHRA determined that risks to future workers who ingest contaminated groundwater beneath the FMC OU were primarily due to arsenic. The extent of groundwater contamination in the shallow aquifer zone at the FMC OU, is defined as the extent of arsenic concentrations above the MCL, is shown on Figure 4.

### **FMC Northern Properties**

For the Northern Properties, current and future industrial use and potential residential use was considered possible and evaluated. Radium-226 via external exposure via the gamma radiation pathway, and arsenic exposure via the groundwater ingestion pathway comprised over 90 percent of the risk estimates for both hypothetical future residents and future outdoor workers. The highest estimated non-cancer risk to hypothetical future residents was from (potential) consumption of homegrown produce ingestion, drinking groundwater and ingesting soil associated with cadmium in soil and arsenic in groundwater.

The following groups the Northern Property parcels (SRIA Parcel designations are shown on Figure 3) by the degree to which they pose potential impacts to human health:

- Areas that pose risks to hypothetical future residents but do not exceed the risk thresholds for any future workers: SRIA Parcel 1, Parcel 2, Parcel 4, Parcel 5, and Parcel 6 (later grouped into RA-I).
- Area that poses risks to hypothetical future residents and future workers: Parcel 3 (later re-designated RA-J).

### **FMC Southern and Western Undeveloped Areas**

For the SUA and WUA shown on Figure 2, current and future industrial use was considered possible and evaluated. No unacceptable risks to future workers were identified in these areas.

#### **2.2.4 Selected Remedy Summary**

The selected remedy for the FMC OU addresses metals, radionuclides, and other COCs identified in soils, fill, and groundwater at the FMC OU. The selected remedy for the FMC OU includes the following components:

- Place evapotranspiration (ET) caps over areas that contain non-slag fill (such as elemental phosphorus, phosphy solids, precipitator solids, kiln scrubber solids, industrial waste water sediments, calciner pond solids, calcined ore, and plant/construction landfill

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debris) to (1) prevent migration of contaminants to groundwater, preventing the infiltration of rainwater, and (2) prevent direct contact with contaminants by current and future workers. ET caps will be placed over the following remediation areas (RA): RA-B, RA-C, RA-D, RA-E, RA-F1, RA-F2, RA-H, and RA-K as shown on Figure 5;

- Place approximately 12 inches of soil cover over (1) areas containing slag fill, (2) ore stockpiles, and (3) the former Bannock Paving areas to prevent gamma radiation and fugitive dust exposure to potential future workers. Gamma radiation-protective soil covers will be placed over RA-A, RA-A1, RA-F, and RA-G, as shown on Figure 5;
- Excavate contaminated soil from Parcel 3 of FMC's Northern Properties, also known as RA-J, and consolidate that soil onto the Former Operations Area to prevent exposure of future workers to elevated levels of radionuclides in surface soil;
- Clean underground reinforced concrete pipes that contain elemental phosphorus and radionuclides to prevent exposure to potential future workers;
- Install an interim groundwater extraction/treatment system to contain contaminated groundwater, thereby preventing contaminated groundwater from migrating beyond the FMC OU and into the Simplot OU and/or adjoining springs or the Portneuf River. The preliminary design is based on 5 extraction wells located along the northeastern FMC Plant Site boundary as shown on Figure 5. Extracted groundwater will either be (1) pumped to a municipal treatment facility in Pocatello for treatment and released in accordance with a National Pollution Discharge Elimination System (NPDES) permit (see Figure 6), or (2) treated within the FMC OU to drinking water standards and/or risk-based cleanup levels and discharged to an infiltration basin(s) within the FMC OU, where it would percolate down to recharge groundwater or evaporate into the atmosphere (see Figure 7). The treatment option for groundwater will be selected and finalized during the RD;
- Implement a long-term groundwater monitoring program to evaluate the performance of the soil and groundwater remedial actions to determine their effectiveness in reaching the cleanup levels, and provide information needed for developing a final groundwater remedy protective of human health and the environment if the current interim remedy cannot meet cleanup requirements within an acceptable timeframe. The long-term groundwater monitoring program will be based on the current groundwater monitoring program, which may be refined during the Remedial Design/Remedial Action;
- Implement a gas monitoring program at the FMC OU capped ponds (also referred to as *CERCLA Ponds* to distinguish them from the RCRA-regulated ponds) and subsurface areas where elemental phosphorus is present to identify potential phosphine and other potential gas generation at concentrations that could pose a risk to human health;

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- Implement and maintain institutional controls that include environmental land use restrictions prohibiting activities that may disturb implemented remedies (such as digging in capped areas) and restricting the use of contaminated groundwater;
  - Install engineering controls or barriers, such as additional fencing to further limit site access;
  - Implement a remedy management system to integrate the existing RCRA Pond caps with the development of new caps, access roads, groundwater extraction system, and utility lines;
  - Implement an FMC OU-wide storm water runoff management plan to minimize cap erosion and the infiltration of contaminants of concern to groundwater, including FMC OU-wide grading and the collection of storm water in retention basins; and
  - Conduct operations and maintenance of implemented remedial actions.

Other actions, including post-closure activities at the RCRA-regulated units, have been and continue to be performed at the FMC facility. These actions are not part of the FMC OU remedial action because they are conducted under RCRA requirements for closed hazardous waste management units and deed notices have been previously recorded pursuant to those requirements. The post-closure work performed at these units remains regulated under RCRA.

### 2.2.5 Remedial Action Objectives

The RAOs for contaminated media at the FMC OU include the following elements:

1. Prevent human exposure via all potential pathways (external gamma radiation exposure, inhalation of radon in potential future buildings, incidental soil ingestion, dermal absorption, and fugitive dust inhalation) to soils and solids contaminated with COCs thereby resulting in an unacceptable risk to human health assuming current or reasonably anticipated future land use.
2. Minimize generation of and prevent exposure to phosphine and other gases that represent an unacceptable risk to human health and the environment.
3. Prevent direct exposure to elemental phosphorus under conditions that may cause it to spontaneously combust, posing a fire hazard as well as resultant air emissions that represent a significant threat to human health or the environment, and prevent such conditions.
4. Prevent potential ingestion of groundwater containing COCs in concentrations exceeding risk-based concentrations (RBC) or ARARs, or site-specific background concentrations if RBCs or ARARs are more stringent than background.

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5. Reduce the release and migration of COCs to the groundwater from FMC OU sources resulting in concentrations in groundwater exceeding RBCs or ARARs, or site-specific background if RBCs or ARARs are more stringent than background.
  6. Restore groundwater that has been impacted by the FMC facility to meet RBCs or ARARs for COCs, or site-specific background levels if RBCs or ARARs are more stringent than background, within a reasonable restoration timeframe.
  7. Reduce the release and migration of COCs to surface water from FMC OU sources at concentrations exceeding RBCs or ARARs, including water quality criteria pursuant to Sections 303 and 304 of the Clean Water Act.

## **2.2.6 Current and Reasonably Anticipated Future Land Uses**

The EMF Site study area evaluated during the RI included portions of the cities of Pocatello and Chubbuck, unincorporated areas of Bannock and Power counties, the Fort Hall Indian Reservation, and U.S. Bureau of Land Management (BLM) lands. The 2010 populations of Pocatello and Chubbuck were estimated at 54,255 and 13,922 respectively (U.S. Census Bureau, 2010). Unincorporated areas in Bannock and Power counties are used principally for agriculture. There are scattered residences (mainly isolated farmhouses) in the unincorporated areas, along with one small subdivision. Population statistics are not available for these unincorporated areas. Land use in the study area has historically included areas zoned for agriculture and various other land uses, including residential, commercial, and industrial. Groundwater wells identified in the EMF Site study area during the RI and as updated in the GWCCR may have historically been used for potable uses, livestock, or irrigation purposes.

As discussed in greater detail in this section, current land uses and zoning, and groundwater uses and water rights have not changed significantly from the time of the RI and SRI evaluation. In addition, future land and groundwater uses are not expected to change significantly from current uses. This conclusion is supported by the fact that future zoning of the FMC OU and surrounding area is not expected to change from the zoning that is currently in place.

### **2.2.6.1 Current Land Uses**

The FMC Plant Site and the FMC Northern Properties are bordered to the north by property owned by the City of Pocatello and used for land application of municipal sewage sludge and agriculture, by the Chevron Texaco bulk petroleum tank farm, and by property owned by Rowlands, Inc. that currently is used for warehousing and transloading pre-packaged milk, and a small area of the property is used for commercial recreational vehicle and boat storage. To the east, FMC properties are bordered by properties owned by the J.R. Simplot Company, where the Simplot Don plant is located. To the south, FMC properties are bordered by undeveloped lands held in trust by and for the Shoshone-Bannock Tribes, and by property owned by Idaho Power to support power distribution in the area.

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The FMC Plant Site was decommissioned and its infrastructure was demolished to ground level during 2002 to 2006. FMC and its contractors utilize three trailers as office space. The trailers are located on SRIA Parcel 3 (Figure 3). There is one building (the “Training Center”) located on the plant site that is utilized by FMC’s contractors for equipment storage and maintenance. FMC’s contractors perform required RCRA post-closure monitoring, work under the RCRA Pond Unilateral Administrative Order, loading the remaining FeP inventory purchased by a third-party and carry out general property maintenance including security. There are no other current uses at the property.

The FMC properties, the Simplot plant site, and other properties extending over four miles to the southwest along Highway 30 are currently zoned “heavy industrial” and generally in use as such. In addition, Power County zoning restrictions apply a one-half mile buffer zone around the industrial-zoned property. This prohibits any non-industrial use with the buffer area. SRI Report Appendix A includes a map provided by Power County depicting the zoning, the one-half mile buffer, and the property ownership. SRI Report Appendix A also includes the Power County zoning ordinance. SRI Report Appendix A is included as Appendix A to this plan. The limited residential development to the northeast and south/southwest within the buffer zone is grandfathered by the zoning ordinance, because its construction pre-dated the county ordinance. However, the ordinance prohibits the expansion or replacement of those grandfathered areas. Land use within this area is generally consistent with that at the time of the EMF Site RI/FS and the SRI/SFS for the FMC OU.

#### **2.2.6.2 Anticipated Future Land Uses**

Future land use information is based primarily on comprehensive plans (which are long-term planning documents) obtained from the municipalities of Chubbuck and Pocatello and from Bannock and Power counties. As confirmed by the Power County Zoning Map (Appendix A), there has been only minimal change in future long-term land use plans for the area at and near the FMC Plant OU since the time of the RI/FS. Further, Power County has stated in a letter to EPA (also attached as part of SRI Report Appendix A to this report) that it does not foresee making any changes to its current land use zoning at or near the FMC Plant OU.

In the near term, FMC and its contractors will continue to perform required work on the property, including implementation of the remedial action as specified in the IRODA and the RD/RA UAO. The Power County Development Authority (PCDA) was organized following the closure and demolition of the FMC plant to facilitate redevelopment of the property. The PCDA has been focusing on potential redevelopment of the SRIA Parcels 4, 5 and 6 following EPA issuance of a Ready for Reuse certification for those parcels on October 25, 2010. Consistent with Power County Zoning and the *Environmental Covenant Imposing Activity and Use Limitations Pursuant to the Uniform Environmental Covenants Act* recorded for these parcels in 2010, described in greater detail in Section 3.1.1 below, the PCDA is focused on potential commercial and industrial redevelopment at the current FMC property and nearby areas.



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### **2.2.6.3 Current Groundwater Use**

Overall, current groundwater uses within the EMF Study area have not changed significantly since the EMF RI. The groundwater wells identified in the EMF study area are used for irrigation, industrial, potable and to a lesser extent livestock purposes. There have been no significant changes in groundwater withdrawal (pumping) rates or patterns since the EMF RI, due in large part to the Snake River Basin Adjudication (SRBA) of water rights in this area. The SRBA essentially “froze” water rights to 1983-1987 (the five-year period prior to the commencement of the adjudication proceedings) diversion levels and evaluated water rights claims based on that production period. The EMF Site is within Basin 29 of the SRBA. The Director of the Idaho Department of Water Resources (IDWR) issued Recommendations on the water rights claims for Basin 29 in 2003 and partial decrees were issued by the SRBA court in 2004. As of August 2013, there are no unresolved disputed water right claims in Basin 29 and IDWR considers the adjudication completed for Basin 29. Due to the SRBA, there is essentially no opportunity for significant “new” water rights in Basin 29 and thus in the EMF Site area.

FMC currently uses the new Pilot House well as a source of potable water for the office trailers located on SRIA Parcel 3, and uses FMC Well #3 as a source of potable water to the Training Center and for dust control on site. Both of these wells produce water from the deep aquifer zone and the water from these wells continues to meet the Safe Drinking Water Act (SDWA) requirements for a Non-Transient Non-Community Water System.

### **2.2.6.4 Anticipated Future Groundwater Use**

As described above, the SRBA has essentially “frozen” water rights to the 1983-1987 (the five-year period prior to the commencement of the adjudication proceedings) diversion levels. The SRBA process is nearing its completion with respect to Basin 29 and there is essentially no opportunity for significant “new” water rights in Basin 29 and thus in the EMF Site area.

In the near term, FMC will continue to use the new Pilot House well as a source of potable water for the office trailers located on SRIA Parcel 3 and FMC Well #3 as a source of potable water to the Training Center and for dust control on site. As described above, the PCDA has been focusing on potential redevelopment of the SRIA Parcels 4, 5 and 6 following EPA issuance of a Ready for Reuse certification for those parcels on October 25, 2010. Consistent with the *Environmental Covenant Imposing Activity and Use Limitations Pursuant to the Uniform Environmental Covenants Act* recorded on these parcels in 2010, described in greater detail in Section 3.1.1 below, any groundwater produced from FMC-operated wells for use in commercial / industrial redevelopment and for human consumption must meet the Maximum Contaminant Levels prescribed by the federal Safe Drinking Water Act.

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## 2.3 PROPERTY INFORMATION

### 2.3.1 Property Ownership

Drawing 41815 - Area Plan Boundary Survey, Deeds and Easements, FMC, Pocatello Plant Property is provided in Appendix B. This drawing presents a schedule of the property deed instruments (Schedule of Property items 1 through 29 depicted with a triangle symbol); easements, notices and covenants (Schedule of Property items 1 through 97 depicted with a circle symbol); and the property boundary surveys.

As defined in the IRODA, the FMC OU consists of the FMC-owned properties that include the former operational areas (“FMC Plant Site”), the Southern and Western Undeveloped Areas, and the Northern Properties. The FMC OU does not include the closed RCRA hazardous waste disposal units or the FMC-owned property that is generally referred to as the Tesco American (or Elias) property that is indicated as deed instrument 27 on Drawing 41815.

Within the exterior boundary of the FMC Plant Site, the Don substation property, located south of the former furnace building, is owned by Idaho Power Company (deed instruments 6 and 10 on Drawing 41815) and the pressure regulating station, located in the southern portion to the east of the east slag pile, is owned by El Paso Natural Gas Co. (currently Williams Northwest Pipeline Co. as successor in interest; deed instrument 7 on Drawing 41815).

The ICs specified in the IRODA for the FMC OU will be implemented exclusively on property owned by FMC. Note that although the owner of record for all of the FMC OU properties is FMC Idaho LLC (deed instruments 28 and 29 on Drawing 41815), FMC Corporation is the sole member of FMC Idaho LLC and therefore has undivided ownership of the properties.

### 2.3.2 Entities Responsible for Institutional Controls

FMC will be responsible for preparing and recording the proprietary controls (e.g., easements, restrictive covenants) as described in greater detail in Section 3.2 below. Consistent with the *Environmental Covenant Imposing Activity and Use Limitations Pursuant to the Uniform Environmental Covenants Act*, Idaho Code § 55-3001, *et seq.* that FMC recorded for SRIA Parcels 4, 5 and 6 (Figure 3), EPA and the State of Idaho (Idaho Department of Environmental Quality) will have the right to enforce the ICs recorded on the FMC OU properties located outside the exterior boundary of the Fort Hall Indian Reservation and EPA will have the right to enforce the ICs recorded on the FMC OU properties located within the boundary of the Fort Hall Indian Reservation.

Power County has and will continue to have the power to enforce its zoning ordinance with respect to the FMC OU properties.

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### 3.0 INSTITUTIONAL CONTROLS AND ACCESS RESTRICTIONS

This section details the ICs currently applicable to and current access restrictions at the FMC OU and describes the ICs and access restrictions that will be implemented as required by the IRODA and UAO for RD/RA.

#### 3.1 IMPLEMENTED INSTITUTIONAL CONTROLS AND ACCESS RESTRICTIONS

##### 3.1.1 Current Institutional Controls

As described in Section 2.2.6.1 above, the FMC OU is within an area zoned “heavy industrial” by Power County or within the one-half mile buffer zone around the industrial zoned property. This prohibits any non-industrial use within the boundary of the buffer area. SRI Report Appendix A includes a map provided by Power County depicting the zoning, the one-half mile buffer, and the property ownership. SRI Report Appendix A also includes the Power County zoning ordinance. SRI Report Appendix A is included as Appendix A to this plan.

During 1995, FMC unilaterally filed *Covenants Restricting Use of Property* on FMC’s property within the FMC OU (with the exception of the Batiste Spring [SRIA Parcel 6]) that placed the following restrictive covenant on the FMC properties:

The use and development of the Property and every portion thereof shall be limited to any industrial and/or commercial use as is then permitted by applicable valid governmental zoning ordinances. The Property shall not be used or developed for any residential purposes.

These restrictive covenants are provided in Appendix C.

During 1999 to 2005, FMC filed a survey plat and a *Notice and Covenants Restricting Use of Property* with the Power County recorder’s office as a record of the type, location, and quantity of waste placed in the Closed RCRA Ponds (8S, 8E, the Phase IV ponds, 9E, 15S, 16S, 17 and 18 Cell A) and the Slag Pit Sump and the property use restrictions at the closure areas. FMC recorded the notices within 60 days of closure certifications for the above units and sent letters to the EPA Regional Administrator that provided EPA with the closure certifications, and copies of the survey plats and deed notices containing the property use restrictions. The survey plats were prepared and certified by a professional land surveyor registered in the State of Idaho. The deed notices notify in perpetuity any potential purchaser of the property that the land has been used to manage hazardous wastes, that land use is restricted under the 40 C.F.R. Part 265 Subpart G regulations, and that the survey plat was filed with the Power County recorder’s office. The land use restrictions include a prohibition against subsurface intrusion within the limit of the final cover and within 20 feet of the anchor trench. These deed notices and survey plats for the closed RCRA units are provided in Appendix C. Copies of these deed notices and survey plats were provided to the Shoshone Bannock Tribes at the time they were provided to EPA and again in 2010.

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In 2006, FMC filed a survey plat and a *Notice and Covenants Restricting Use of Property* with the Power County recorder's office as a record of the type, location, and quantity of waste placed in the in the calciner ponds as described in 40 CFR 265.119(a). FMC recorded the notice and survey plat and transmitted copies of the survey plat and deed notice containing the property use restrictions to the Director of the Idaho Department of Environmental Quality (IDEQ). The survey plat was prepared and certified by a professional land surveyor registered in the State of Idaho. The deed notice and survey plat for the calciner ponds are provided in Appendix C.

In 2010, FMC recorded an *Environmental Covenant Imposing Activity and Use Limitations Pursuant to the Uniform Environmental Covenants Act*, Idaho Code § 55-3001, *et seq.* on SRIA Parcels 4, 5 and 6 (Figure 3) to support the EPA-issued Ready for Reuse certification for these properties. This covenant is provided in Appendix C.

### 3.1.2 Current Access Restrictions

The FMC Plant Site and SUA and WUAs have a combination of fencing and locked gates around the property boundary and control unauthorized entry.

## 3.2 PLANNED INSTITUTIONAL CONTROLS AND ACCESS RESTRICTIONS

This section describes the ICs that are planned as part of the selected remedy at the FMC OU. The IC Relationship Matrix presented in Table 3 summarizes the implemented ICs described above and the planned ICs described below to demonstrate that the restrictions appropriately support achievement of the RAOs of the selected remedy.

### 3.2.1 Soil Remedial Action Institutional Controls

As shown on the IC Relationships Matrix, there are three (3) different sets of soil remedial action use restriction / IC objectives that will be applied to the RAs at the FMC OU. The specific RAs and the set of use restriction / IC objectives that will be applied to 1) RAs identified for ET caps where elemental phosphorus (P4) is known or suspected are described in subsection 3.2.1.1; 2) RAs identified for ET Caps where P4 is not present and RAs identified for gamma caps are described in subsection 3.2.1.2; and 3) FMC Northern Properties (RA-I and RA-J) are described in subsection 3.2.1.3. The set of use restriction / IC objectives that will be applied to the FMC Southern and Western Undeveloped Areas (not designated as RAs) are described in subsection 3.2.1.4.

#### 3.2.1.1 RAs Identified for ET Caps Where P4 is Present

Evapotranspirative (ET) caps will be placed on the RAs where elemental phosphorus (P4) is known or suspected to be present, specifically RA-B, RA-C, RA-F1, RA-F2 and RA-K (see Figure 5).

Institutional controls will be implemented and maintained that include restrictive covenants and/or environmental land use easements prohibiting activities that may disturb implemented

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remedies (such as digging in capped areas). This remedial action element and the planned ICs are necessary to support the following RAOs (RAOs #1 and #3 from Section 2.2.5):

- Prevent human exposure via all potential pathways (external gamma radiation exposure, inhalation of radon in potential future buildings, incidental soil ingestion, dermal absorption, and fugitive dust inhalation) to soils and solids contaminated with COCs thereby resulting in an unacceptable risk to human health assuming current or reasonably anticipated future land use.
- Prevent direct exposure to elemental phosphorus under conditions that may cause it to spontaneously combust, posing a fire hazard as well as resultant air emissions that represent a significant threat to human health or the environment, and prevent such conditions.

In order to implement the required ICs for these RAs where ET caps will be placed, FMC will prepare and implement a UECA covenant or other EPA-enforceable instrument that will limit the use and activity on these RAs as summarized below:

- Restrict use to commercial/industrial only;
- Prohibit excavation and activities within the RAs that could disturb the cap unless the use is specifically required pursuant to an EPA-approved soil remedy OM&M Plan or other EPA-approved plan; and
- Prohibit excavation or any intrusion (e.g., borings, caissons, or wells) into the fill beneath these capped RAs that could result in potential exposure to P4.
- Restrict use of groundwater to prevent potential ingestion of groundwater containing COCs in concentrations exceeding MCLs or RBCs.

Note that although the FMC properties that contain these RAs are already subject to a use restriction that prohibits residential use, the planned ICs will also include an “overlay” restriction that will provide layered ICs. Also, as shown above, on the IC Relationships Matrix and described in Section 3.2.2 below, the use restriction to prevent potential ingestion of groundwater containing COCs in concentrations exceeding MCLs or RBCs will be included in the ICs for these RAs.

Appendix D provides a draft UECA covenant template, based on the *Environmental Covenant Imposing Activity and Use Limitations Pursuant to the Uniform Environmental Covenants Act* that FMC recorded for SRIA Parcels 4, 5 and 6, that may be used for the planned ICs. Appendix D also includes a draft environmental easement template that may be used instead of a covenant as appropriate for the portion of the FMC OU that is within the exterior boundaries of the Fort Hall Indian Reservation. The use and activity restrictions stated above will be included under

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**“Activity and Use Limitations”** in the covenants or easements with text approved by EPA. In addition, following completion of construction of the ET caps on these RAs, a boundary survey will be performed and a survey plat prepared and certified by a professional land surveyor registered in the State of Idaho for the limits of the cap on these RAs. The survey plat will be recorded contemporaneously with the covenants or easements.

### **3.2.1.2 RAs Identified for ET Caps Where P4 is Not Present and RAs Identified for Gamma Caps**

Evapotranspirative (ET) caps also will be placed on the RAs where elemental phosphorus (P4) is not present or suspected, specifically RA-D, RA-E and RA-H (see Figure 5). An approximately 12-inch soil cover (gamma cap) will be placed on RA-A, RA-F (areas other than RA-F1 and RA-F2), and RA-G (see Figure 5).

Planned institutional controls will be implemented and maintained that include environmental land use easements prohibiting activities that may disturb implemented remedies (such as digging in capped areas). This remedial action element and the planned ICs are necessary to support the following RAO (RAO #1 from Section 2.2.5):

- Prevent human exposure via all potential pathways (external gamma radiation exposure, inhalation of radon in potential future buildings, incidental soil ingestion, dermal absorption, and fugitive dust inhalation) to soils and solids contaminated with COCs thereby resulting in an unacceptable risk to human health assuming current or reasonably anticipated future land use.

In order to implement the required ICs for these RAs, FMC will prepare and implement a UECA covenant or other EPA-enforceable instrument that will limit the use and activity on these RAs as summarized below:

- Restrict use to commercial/industrial only, and
- Prohibit excavation and activities within the RAs that could disturb the cap unless (1) the use is specifically required pursuant to an EPA-approved soil remedy OM&M Plan or other EPA-approved plan or (2) the excavation is performed pursuant to an *Excavation and Fill Management Plan* (a draft plan is contained in Appendix E).
- Restrict use of groundwater to prevent potential ingestion of groundwater containing COCs in concentrations exceeding MCLs or RBCs.

In order to accommodate potential redevelopment of the FMC Plant Site and acknowledge the potential that entities (such as Williams or Idaho Power) that have rights to access their easements (refer to Drawing 41815 in Appendix B) and facilities within these RAs, any future excavations in these RAs will require controls to maintain the integrity of the caps and prevent redistribution of underlying fill materials. Any excavation for new utilities (to support

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redevelopment) or related to existing utilities within easements that might be required within these RAs will be subject to an *Excavation and Fill Management Plan*. As described in the SFS Report, a soil/fill management plan will be incorporated into deed restrictions to ensure that disturbance, management, and/or disposition of site-impacted soil/fill are controlled under enforceable restrictions that attach to and run with the land. A draft *Excavation and Fill Management Plan* (EFMP) is contained in Appendix E of this ICIAP that is being submitted with the soil remedy Pre-final (90/95%) Design Submittal. The EFMP is designed to control redistribution of impacted soil/fill (e.g., specify where excess excavated soil/fill can be placed and the type and specifications for “recapping” that material) and the design and specifications for reconstructing the ET or gamma cap layer(s) over the excavated area.

Note that although the FMC properties that contain these RAs are already subject to a use restriction that prohibits residential use, the planned ICs will also include an “overlay” restriction that will provide layered ICs. Also, as shown above, on the IC Relationships Matrix and described in Section 3.2.2 below, the use restriction to prevent potential ingestion of groundwater containing COCs in concentrations exceeding MCLs or RBCs will be included in the ICs for these RAs.

Appendix D provides a draft UECA covenant template that may be used for the planned ICs. Appendix D also includes a draft environmental easement template that may be used instead of a covenant as appropriate for the portion of the FMC OU that is within the exterior boundaries of the Fort Hall Indian Reservation. The use and activity restrictions stated above will be included under “**Activity and Use Limitations**” on the covenants or easements with text approved by EPA. In addition, following completion of construction of the ET caps on these RAs, a boundary survey will be performed and a survey plat prepared and certified by a professional land surveyor registered in the State of Idaho for the limits of the cap on these RAs. The survey plat will be recorded contemporaneously with the covenants or easements.

### **3.2.1.3 FMC Northern Properties**

As shown on the IC Relationship Matrix, the soil and groundwater use restrictions / IC objectives are the same for all of the FMC Northern Properties; however, the status of these properties are different and are described separately by SRIA parcel below.

#### **SRIA Parcel 3**

Contaminated surface soil at Parcel 3 of FMC’s Northern Properties, also known as RA-J, will be excavated and consolidated onto the FMC Plant Site at an RA(s) that will be capped to prevent exposure of future workers to elevated levels of radionuclides in surface soil. After completion of the remedial action and confirmation that the soil cleanup levels have been met through post-remedial soil sampling and analysis per the Performance Standards Verification Plan (PSVP), FMC will prepare and implement a UECA covenant or other EPA-enforceable instrument that will limit the use and activity on these RAs as summarized below:

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- Restrict use to commercial/industrial only, and
  - Restrict use of groundwater to prevent potential ingestion of groundwater containing COCs in concentrations exceeding MCLs or RBCs.

Note that although the FMC Northern Property SRIA Parcel 3 (RA-J) is already subject to a use restriction that prohibits residential use, the planned ICs will also include an “overlay” restriction that will create layered ICs. Also, as shown above, on the IC Relationships Matrix and described in Section 3.2.2 below, the use restriction to prevent potential ingestion of groundwater containing COCs in concentrations exceeding MCLs or RBCs will be included in the ICs for these RAs.

A draft UECA covenant template that will be used for the planned ICs at SRIA Parcel 3 (RA-J) is provided in Appendix D. The use and activity restrictions stated above will be included under “**Activity and Use Limitations**” on the covenant with text that will be approved by EPA and IDEQ. A UECA covenant may be placed in this area because SRIA Parcel 3 (RA-J) is located entirely outside the Fort Hall Reservation boundary.

### **SRIA Parcels 1 and 2**

Based on the results of the SRIA, surface soil in Parcels 1 and 2 did not exceed the future worker risk thresholds but did exceed the future residential risk thresholds, thus the use restrictions are summarized below:

- Restrict use to commercial/industrial only, and
- Restrict use of groundwater to prevent potential ingestion of groundwater containing COCs in concentrations exceeding MCLs or RBCs.

Note that although the FMC Northern Property SRIA Parcels 1 and 2 (part of RA-I) are already subject to a use restriction that prohibits residential use, the planned ICs will also include an “overlay” restriction. Also, as shown above, on the IC Relationships Matrix and described in Section 3.2.2 below, the use restriction to prevent potential ingestion of groundwater containing COCs in concentrations exceeding MCLs or RBCs will be included in the ICs for these RAs.

A draft UECA covenant template that may be used for the planned ICs is provided in Appendix D. Also included in Appendix D is a draft environmental easement template that may be used instead of a covenant as appropriate given that SRIA Parcels 1 and 2 are located within the exterior boundaries of the Fort Hall Reservation. The use and activity restrictions stated above will be included under “**Activity and Use Limitations**” on the covenant or easement with text that will be approved by EPA.



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### **SRIA Parcels 3, 4, and 5**

As described in Section 3.1.1 above, in 2010, FMC recorded an *Environmental Covenant Imposing Activity and Use Limitations Pursuant to the Uniform Environmental Covenants Act*, Idaho Code § 55-3001, *et seq.* on the SRIA Parcels 4, 5 and 6 (part of RA-I) to support the EPA-issued Ready for Reuse (RfR) certification for these properties. The following are the **Activity and Use Limitations** imposed under that covenant:

1. The Property, and any portion thereof, shall not be used for any residential purposes, child care, hospitals, schools, churches or other religious premises, or residential use associated with commercial premises such as managers' housing at hotels or motels.
2. There shall be no extraction of ground water under the Property for human consumption that exceeds the Maximum Contaminant Levels prescribed by the federal Safe Drinking Water Act.
3. The Property shall not be used for growing fruits and vegetables for human consumption.

The recorded UECA covenant is fully enforceable by FMC, EPA and IDEQ. FMC does not believe any additional ICs are needed on these parcels.

#### **3.2.1.4 Southern and Western Undeveloped Areas**

Based on the results of the SRIA, surface soil in SUA and WUA did not exceed the future worker risk thresholds, thus the use restrictions are summarized below:

- Restrict use to commercial/industrial only, and
- Restrict use of groundwater to prevent potential ingestion of groundwater containing COCs in concentrations exceeding MCLs or RBCs.

Note that although the SUA and WUA are already subject to a use restriction that prohibits residential use, the planned ICs will also include an “overlay” restriction. Also, as shown above, on the IC Relationships Matrix and described in Section 3.2.2 below, the use restriction to prevent potential ingestion of groundwater containing COCs in concentrations exceeding MCLs or RBCs will be included in the ICs for these areas.

A draft UECA covenant template that may be used for the planned ICs is provided in Appendix D. Also included in Appendix D is a draft environmental easement template that may be used instead of a covenant as appropriate given that the WUA and majority of the SUA are located within the exterior boundaries of the Fort Hall Reservation. The use and activity restrictions stated above will be included under “**Activity and Use Limitations**” on the covenant or easement with text that will be approved by EPA.

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### 3.2.2 Groundwater Remedial Action Institutional Controls

As described above, all of the RAs subject to the planned ICs (and the current ICs recorded for SRIA Parcels 3, 4 and 5) will include a use restriction that supports the following RAO (RAO #4 in Section 2.2.5):

- Prevent potential ingestion of groundwater containing COCs in concentrations exceeding risk-based concentrations (RBC) or ARARs, or site-specific background concentrations if RBCs or ARARs are more stringent than background.

As shown on the IC Relationships Matrix, the use restriction to prevent potential ingestion of groundwater containing COCs in concentrations exceeding MCLs or RBCs will be included on the planned ICs for the RAs as described in Sections 3.2.1.1 through 3.2.1.4 above.

### 3.2.3 Planned Access Restrictions

As described in Section 3.1.2 above, the FMC Plant Site has a combination of fencing and locked gates around the property boundary and controlled entry. FMC believes the current site access controls are adequate and additional access controls are not planned. The monitoring and maintenance of the access controls for the FMC OU will be specified in the soil remedy Operations, Monitoring and Maintenance Plan (OM&M Plan).

## 3.3 ENTITIES RESPONSIBLE FOR INSTITUTIONAL CONTROL IMPLEMENTATION

### 3.3.1 FMC Corporation

FMC is responsible for implementing the selected remedy pursuant to the UAO for RD/RA. FMC has overall responsibility for procuring contractors to perform the RA in accordance with the RD and for assuring that the requirements of the UAO for RD/RA are met. FMC is responsible for finalizing and recording the proprietary controls described in Section 3.2 and will be responsible for monitoring those proprietary controls and the access restrictions. Post-remedy monitoring and maintenance of the access restrictions will be conducted in accordance with the soil remedy OM&M Plan.

### 3.3.2 U.S. Environmental Protection Agency

EPA is the lead agency overseeing the remediation of the FMC OU. EPA issued the RD/RA UAO, and is responsible for approving all plans and reports related to implementing the selected remedy. EPA has authority under CERCLA to enforce the requirements of ICs.

As shown on the draft UECA covenant template and environmental easement template that are provided in Appendix D, EPA will be a party to and have the right to enforce the proprietary controls. In addition, EPA retains all of its access authorities and rights, including enforcement authorities, in accordance with Section XIII of the RD/RA UAO.

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Consistent with FMC's past practice with the RCRA pond closure notices and survey plats, FMC will provide copies of the recorded proprietary controls to the Shoshone Bannock Land Use office.

### 3.3.3 State of Idaho / Idaho Department of Environmental Quality

Consistent with the *Environmental Covenant Imposing Activity and Use Limitations Pursuant to the Uniform Environmental Covenants Act* that FMC recorded on the SRIA Parcels 4, 5 and 6, the State of Idaho through the IDEQ will be also be a party to and have the right to enforce the proprietary controls recorded for the portions of the FMC OU that lie outside the exterior boundary of the Fort Hall Indian Reservation.

### 3.3.4 Power County

Consistent with Idaho Code § 55-813, which defines conveyance as “every instrument in writing by which any estate or interest in real property is created, alienated, mortgaged or encumbered, or by which the title to any real property may be affected, except wills,” the planned proprietary controls as encumbrances constitute conveyances and as such must be recorded with Power County. Idaho Code § 55-813 provides that instruments entitled to be recorded must be recorded by the county recorder of the county in which the affected real property is situated. Because all the FMC properties where proprietary controls will be placed are located in Power County, Idaho, the planned restrictive covenants or environmental easements will be recorded in Power County.

## 3.4 SCHEDULE

FMC already has placed access and use restrictions at the FMC OU and required its on-site and remedial action contractors to comply with FMC health and safety plans. This makes it unnecessary for purposes of human health protection to impose additional land use restrictions prior to or during the FMC OU remedial action construction. In addition, the final legal description (i.e., survey plat) for the soil remedy capped RAs will not be completed until cap construction (which will define the final limit of those caps) has been completed. Similarly, the planned proprietary control for SRIA Parcel 3 (RA-J) is not properly implemented until after the remedial action is completed and verified by sampling and analysis pursuant to the PSVP. Thus, the planned proprietary controls (covenants and associated survey plats) will be finalized, and FMC will seek EPA approval of the final proprietary controls, following EPA's issuance of the Notice of Construction Completion of the Remedial Action for the soil remedy at the FMC OU (per UAO for RD/RA Paragraph 73 b.).

Pursuant to Paragraph 46 c. of the RD/RA UAO, within 15 days after EPA's approval and acceptance of the proprietary controls and title evidence, FMC will execute and record the proprietary controls. Within 30 days after recording the proprietary controls, FMC will provide EPA with final evidence of title acceptable to EPA, and a certified copy of the original recorded proprietary controls showing the clerk's recording stamps.

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## **4.0 MONITORING, ENFORCEMENT, MODIFICATION AND TERMINATION OF INSTITUTIONAL CONTROLS**

### **4.1 INSTITUTIONAL CONTROL MONITORING**

FMC will be responsible for monitoring the proprietary controls and the access restrictions. Post-remedy monitoring and maintenance of the access restrictions will be conducted in accordance with the soil remedy OM&M Plan. As indicated in the draft templates for a UECA covenant and environmental easement provided in Appendix D, FMC will submit annually to EPA (and to IDEQ for those proprietary controls to which IDEQ is a party) written documentation verifying (1) that the activity and use limitations remain in place and (2) compliance with the activity and use limitations.

Pursuant to Section 121 of CERCLA and the National Contingency Plan, EPA conducts five-year reviews of remedial actions that result in any hazardous substances, pollutants, or contaminants remaining at sites at levels above those EPA has determined acceptable for unrestricted use and access. The purpose of these five-year reviews is to evaluate the implementation and performance of the remedial action to determine if it is or will be protective of human health and the environment. EPA, as the lead agency, is responsible for conducting the five-year reviews and for preparing the five-year review reports. FMC will assist EPA in conducting any necessary investigations as part of the five-year reviews, pursuant to Paragraph 36 of the RD/RA UAO.

Each five-year review will include an evaluation of whether the proprietary controls and access restrictions are in place and remain protective. As a result of the five-year reviews, EPA may make recommendations for further actions to ensure that appropriate LUCs are in place and are being effectively monitored and enforced.

### **4.2 ENFORCEMENT OF INSTITUTIONAL CONTROLS**

As described in Sections 3.3.1 through 3.3.3, FMC and EPA will have the right to enforce the proprietary controls implemented at the FMC OU. In addition to FMC and EPA, the State of Idaho through the IDEQ will also have the right to enforce the proprietary controls that will be recorded for the portions of the FMC OU that lie outside the exterior boundary of the Fort Hall Indian Reservation. FMC, EPA and IDEQ currently have the right to enforce the *Environmental Covenant Imposing Activity and Use Limitations Pursuant to the Uniform Environmental Covenants Act* that FMC recorded for SRIA Parcels 4, 5 and 6 (portions of RA-I).

### **4.3 MODIFICATION OR TERMINATION OF INSTITUTIONAL CONTROLS**

As shown on the Institutional Controls Relationship Matrix, the proprietary controls on the FMC Plant Site are expected to be needed in perpetuity and, thus, would only need to be modified if EPA determines that additional institutional controls are necessary to maintain the integrity of

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the remedy or if the final Record of Decision for the FMC OU is substantially different than the IRODA.

Each five-year review of the FMC OU remedy will include an evaluation of the effectiveness and protectiveness of the remedy. The results of these evaluations will be presented by EPA in the five-year review report along with identified issues and associated recommendations.

Although not anticipated, the five-year review report may also include recommendations to add or expand ICs and access restrictions. FMC will be responsible for developing a plan to respond to the recommendations in EPA's five-year review reports.

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## 5.0 REFERENCES

- Bechtel, 1996. Remedial Investigation Report for the Eastern Michaud Flat Site. Bechtel Environmental, Inc. (BEI), Draft issued September 1995 and revised August 1996.
- Bechtel, 1997. Feasibility Study Report for the FMC Subarea of the Eastern Michaud Flats Site, April 1997.
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- EPA, 2012a. Interim Amendment to the Record of Decision for the EMF Superfund Site - FMC Operable Unit - Pocatello, Idaho, September 27, 2012.
- EPA, 2012b. Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites. OSWER 9355.0-89, EPA-540-R-09-001. December 2012.
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- EPA, 2013a. Unilateral Administrative Order for Remedial Design and Remedial Action, EPA Docket No. CERCLA-10-2013-0116, June 10, 2013.
- EPA, 2013b. Implementing Institutional Controls in Indian Country. Office of Site Remediation Enforcement, Office of Enforcement and Compliance Assurance. November 2013.
- Simplot, 2012. 2011 Annual Report Groundwater/Surface Water Remedy, Simplot Operable Unit, Eastern Michaud Flats Superfund Site, Pocatello, Idaho, Prepared by Formation Environmental, March 2012.
- Simplot, 2013. 2012 Annual Report Groundwater/Surface Water Remedy, Simplot Operable Unit, Eastern Michaud Flats Superfund Site, Pocatello, Idaho, Prepared by Formation Environmental, May 2013.

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<http://www.census.gov/popfinder/> for Idaho, Pocatello city and  
Chubbuck city.

**TABLE 1**  
**CONTAMINANTS OF CONCERN IN SOIL AND CLEANUP LEVELS FOR RISK DRIVERS FOR THE FMC OU (Table 9 from the IROD)**

Contaminants of Concern	Units	Cleanup Levels Industrial <sup>1</sup>
Antimony	mg/kg	
Arsenic	mg/kg	150
Beryllium	mg/kg	
Boron	mg/kg	
Cadmium	mg/kg	39
Fluoride	mg/kg	49,000
Gross alpha	pCi/g <sup>a</sup>	
Gross beta	pCi/g <sup>a</sup>	
Lead-210	pCi/g	67
Manganese	mg/kg	
Mercury	mg/kg	
Nickel	mg/kg	
Phosphorus (elemental) <sup>c</sup>	mg/kg	-
Polonium-210	pCi/g	
Potassium-40	pCi/g	
Radium-226	pCi/g <sup>a</sup>	3.8
Radon	pCi/g <sup>a,b</sup>	
Selenium	mg/kg	
Silver	mg/kg	
Thallium	mg/kg	
Thorium-230	pCi/g	
Uranium-238	mg/kg	
Vanadium	mg/kg	
Zinc	mg/kg	

<sup>a</sup> Individual radionuclides potentially responsible for elevated gross alpha and beta levels are also COCs.

<sup>b</sup> Retained as a COC mainly for evaluation of potential radon infiltration into buildings under alternate future commercial or industrial uses of the site.

<sup>c</sup> There are currently no cleanup levels for phosphorus or elemental phosphorus in soils.

<sup>1</sup> Cleanup levels are provided for COCs associated with worker risk at the former operations area or Northern Properties. The cleanup level cited is the lower cleanup level between the outdoor / commercial / industrial worker and construction worker preliminary remediation goal (PRG) from the SFS Work Plan.



**TABLE 2**  
**CONTAMINANTS OF CONCERN IN GROUNDWATER AND CLEANUP LEVELS FOR**  
**THE FMC OU (Table 8 from the IROD)**

Contaminants of Concern	Units	Maximum Detected Concentration	Risk-Based Concentration <sup>a</sup>	Federal Maximum Contaminant Level (MCL)	Cleanup Level
Antimony	mg/l	1.07	0.006	0.006	0.006
Arsenic	mg/l	2.66	0.000048	0.01 <sup>e</sup>	0.01
Beryllium	mg/l	0.083	0.000019	0.004	0.004
Boron	mg/l	89	1.36	-	1.36
Cadmium	mg/l	3.9	0.008	0.005	0.005
Chromium	mg/l	7.58	0.077	0.1	0.1
Fluoride	mg/l	193	0.93	4	4
Manganese	mg/l	91.2	0.077	-	0.077
Mercury	mg/l	0.0043	0.0046	0.002	0.002
Nickel	mg/l	3.46	0.299	0.1	0.1
Nitrate	mg/l	466	25.03	10	10
Phosphorus <sup>d</sup>	mg/l	697	TBD	-	TBD
Phosphorus (elemental)	mg/l	0.258	0.00073	N/A	0.00073
Radium-226	pCi/l	7.09	0.39	5*	5
Selenium	mg/l	19.73	0.07	0.05	0.05
Thallium	mg/l	9.09	0.001	0.002	0.002
Vanadium	mg/l	0.45	0.108	-	0.108
Zinc	mg/l	28.9	3.92	-	3.92
Tetrachloroethene	mg/l	0.035	0.001	0.005	0.005
Trichloroethene	mg/l	0.028	0.002	0.005	0.005
Gross Alpha <sup>b</sup>	pCi/l	1,690	-	15	15
Gross Beta <sup>c</sup>	pCi/l	1,355	-	4 mrem/yr	4 mrem/yr

\*Combined Ra 226 and Ra 228.

<sup>a</sup> RBCs for groundwater based on drinking water and watering homegrown produce. RBC value based on cancer risk of  $10^{-6}$  or HQ=1.

<sup>b</sup> Individual radionuclides potentially responsible for elevated gross alpha and gross beta levels are also COCs. These include but are not limited to lead-210, polonium-210, potassium-40, thorium-230, uranium-234, and uranium-238.

<sup>c</sup> Beta particle and photon activity based on consumption of 2 liters/day.

<sup>d</sup> RBC for phosphorus will be defined in a future decision document.

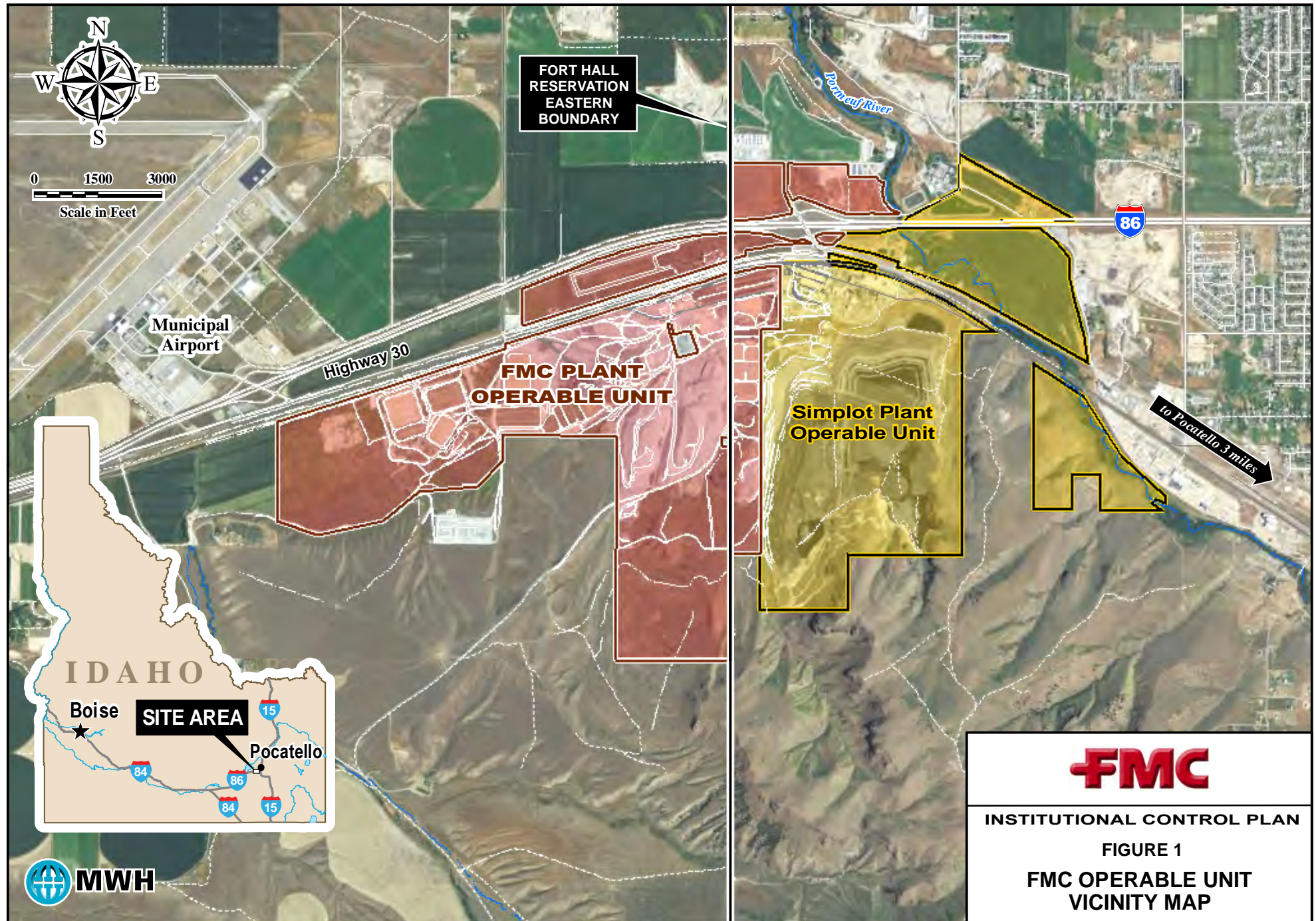
<sup>e</sup> MCL was changed from 0.050 mg/l to 0.010 mg/l in 2006.

**TABLE 3**  
**FMC OPERABLE UNIT**  
**INSTITUTIONAL CONTROLS RELATIONSHIP MATRIX**

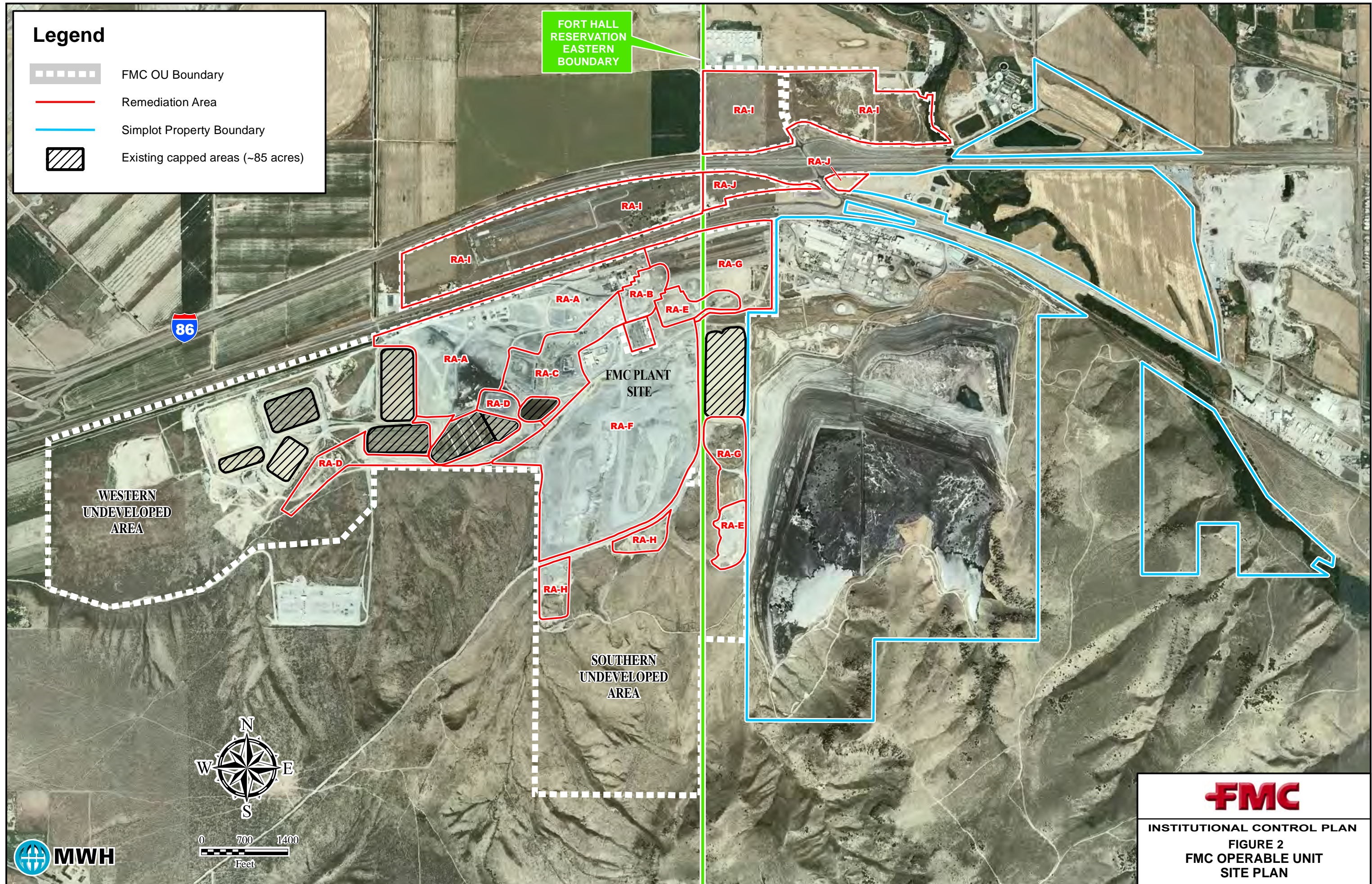
<b>FMC OU Area<sup>1</sup> and Remedial Action Summary</b>	<b>Soil Contaminants Remaining after Remedial Action</b>	<b>Contaminated Media</b>	<b>Use Restriction / IC Objective</b>	<b>IC Instruments (Implemented)</b>	<b>IC Instruments (Planned)</b>	<b>Conditions for Modification or Termination</b>
Remediation Areas (RAs) where an evapotranspirative (ET) cap will be placed and elemental phosphorus (P4) is known or suspected to be present: <b>RA-B, RA-C, RA-F1, RA-F2 and RA-K</b> (see Figure 5)	Metals and radionuclides. (see Table1) Elemental phosphorus.	Residual source/fill materials and soil mixed with fill materials.	Restrict use to commercial/industrial only. Prohibit excavation and activities within the RAs that could disturb the cap unless the use is specifically required pursuant to the EPA approved soil remedy OM&M Plan or future EPA approved plan. Prohibit excavation or any intrusion (e.g., borings, caissons, or wells) into the fill beneath these capped RAs that could result in potential exposure to P4.	<i>Covenants Restricting Use of Property</i> (1995) Power County Development Code (2005)	<b>Proprietary Controls.</b> A UECA covenant or comparable EPA enforceable instrument that will limit the use and activity on these RAs as summarized in “Use restrictions / IC Objective” for these RAs and including the use restriction for groundwater.	Proprietary controls needed in perpetuity.
RAs where and ET cap will be placed and P4 is not present or suspected: <b>RA-D, RA-E and RA-H</b> (see Figure 5)	Metals and radionuclides. (see Table1)	Residual source/fill materials and soil mixed with fill materials.	Restrict use to commercial/industrial only. Prohibit excavation and activities within the RAs that could disturb the cap unless (1) the use is specifically required pursuant to the EPA approved soil remedy OM&M Plan or future EPA approved plan or (2) the excavation is performed pursuant to an <i>Excavation and Fill Management Plan</i> .	<i>Covenants Restricting Use of Property</i> (1995) Power County Development Code (2005)	<b>Proprietary Controls.</b> A UECA covenant or comparable EPA enforceable instrument that will limit the use and activity on these RAs as summarized in “Use restrictions / IC Objective” for these RAs and including the use restriction for groundwater.	Proprietary controls needed in perpetuity.
RAs where an approximately 12-inch soil cover (gamma cap) will be placed: <b>RA-A, RA-F (areas other than RA-F1 and RA-F2) and RA-G</b> (see Figure 5)	Metals and radionuclides. (see Table1)	Residual source/fill materials and soil mixed with fill materials.	Restrict use to commercial/industrial only. Prohibit excavation and activities within the RAs that could disturb the cap unless (1) the use is specifically required pursuant to the EPA approved soil remedy OM&M Plan or future EPA approved plan or (2) the excavation is performed pursuant to an <i>Excavation and Fill Management Plan</i> .	<i>Covenants Restricting Use of Property</i> (1995) Power County Development Code (2005)	<b>Proprietary Controls.</b> A UECA covenant or comparable EPA enforceable instrument that will limit the use and activity on these RAs as summarized in “Use restrictions / IC Objective” for these RAs and including the use restriction for groundwater.	Proprietary controls needed in perpetuity.
<b>RA-J (SRIA Parcel 3)</b> , where the upper approximately 6 inches of soil will be excavated or deep tilled (see Figure 5)	None above future commercial / industrial worker soil cleanup levels; soil will be removed / tilled until surface soils are below soil cleanup levels as confirmed by post-remedial soil sampling and analysis.	Surface soil to be removed or deep tilled to below future commercial / industrial worker soil cleanup levels.	Restrict use to commercial/industrial only.	<i>Covenants Restricting Use of Property</i> (1995) Power County Development Code (2005)	<b>Proprietary Controls.</b> A UECA covenant or comparable EPA enforceable instrument that will limit the use and activity on this RA as summarized in “Use restrictions / IC Objective” for this RA and including the use restriction for groundwater.	The post-remedial action surface soil concentrations may be re-evaluated from time to time (potentially during 5-year reviews) to determine if the ICs need to be modified or can be terminated.
<b>RA-I (SRIA Parcels 1 and 2) – no action</b> (see Figures 3 and 5)	None above future commercial / industrial worker soil cleanup levels.	Surface soil concentrations below future commercial / industrial worker soil cleanup levels.	Restrict use to commercial/industrial only.	<i>Covenants Restricting Use of Property</i> (1995) Power County Development Code (2005)	<b>Proprietary Controls.</b> A UECA covenant or comparable EPA enforceable instrument that will limit the use and activity on this RA as summarized in “Use restrictions / IC Objective” for this RA and including the use restriction for groundwater.	The surface soil concentrations may be re-evaluated from time to time (potentially during 5-year reviews) to determine if the ICs need to be modified or can be terminated.
<b>RA-I (SRIA Parcels 4, 5 and 6) – no action</b> (see Figures 3 and 5)	None above future commercial / industrial worker soil cleanup levels.	Surface soil concentrations below future commercial / industrial worker soil cleanup levels.	Restrict use to commercial/industrial only.	<i>Environmental Covenant Imposing Activity and Use Limitations Pursuant to the Uniform Environmental Covenants Act (2010)</i>	<b>No additional ICs planned.</b> The existing UECA covenant effectuated EPA and IDEQ enforceable use and activity limits consistent with the “Use restrictions / IC Objective,” including the use restriction for groundwater.	The surface soil concentrations may be re-evaluated from time to time (potentially during 5-year reviews) to determine if the ICs need to be modified or can be terminated.
<b>Southern and Western Undeveloped Areas – no action</b> (see Figure 5)	None above future commercial / industrial worker soil cleanup levels.	Surface soil concentrations below future commercial / industrial worker soil cleanup levels.	Restrict use to commercial/industrial only.	<i>Covenants Restricting Use of Property</i> (1995) Power County Development Code (2005)	<b>Proprietary Controls.</b> A UECA covenant or comparable EPA enforceable instrument that will limit the use and activity on this RA as summarized in “Use restrictions / IC Objective” for this RA and including the use restriction for groundwater.	The surface soil concentrations may be re-evaluated from time to time (potentially during 5-year reviews) to determine if the ICs need to be modified or can be terminated.
<b>Groundwater</b> (areas where groundwater exceeds MCLs or RBCs) (See Figure 4)	Arsenic and other metals (see Table 2)	Groundwater exceeding MCLs or RBCs beneath the FMC OU	Prevent potential ingestion of groundwater containing COCs in concentrations exceeding MCLs or RBCs.	<i>Covenants Restricting Use of Property</i> (1995) <i>Environmental Covenant Imposing Activity and Use Limitations Pursuant to the Uniform Environmental Covenants Act (2010; SRIA Parcels 4, 5 and 6 only)</i> Power County Development Code (2005)	<b>Proprietary Controls.</b> The groundwater use restriction will be included on the instruments recorded for the RAs as indicated above.	The extent of groundwater contamination is predicted to decrease over time (over decades) following implementation of the source control measure (caps), operation of the groundwater hydraulic control remedy and through natural attenuation. Extent of groundwater contamination and potential modification of ICs per EPA 5-year reviews.

<sup>1</sup> The Remediation Areas (RAs) requiring Institutional Controls (ICs) are as identified in the SFS report, IRODA and UAO for RD/RA. The final extent of the RAs that require ET or gamma caps requiring ICs will be surveyed and platted upon completion of the RA.  
Acronyms: OU = Operable Unit, RA = Remediation Area, ET = evapotranspirative, P4 = elemental phosphorus, SRIA = Supplemental Remedial Investigation, COCs = contaminants of concern, MCL = maximum contaminant limit, RBC = risk-based concentration, SFS = Supplemental Feasibility Study, IRODA = Interim Record of Decision Amendment, UAO for RD/RA = Unilateral Administrative Order for Remedial Design and Remedial Action.

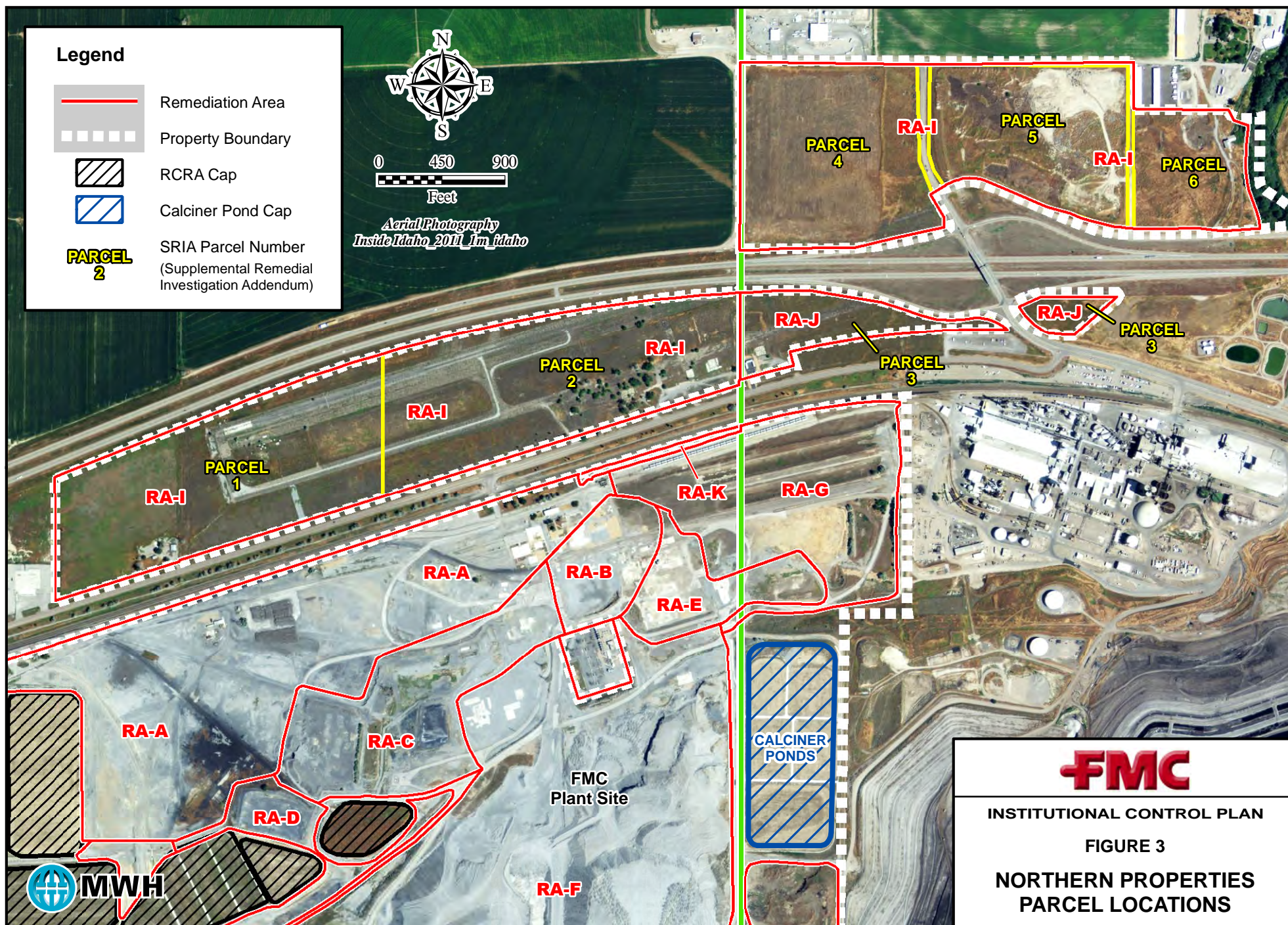






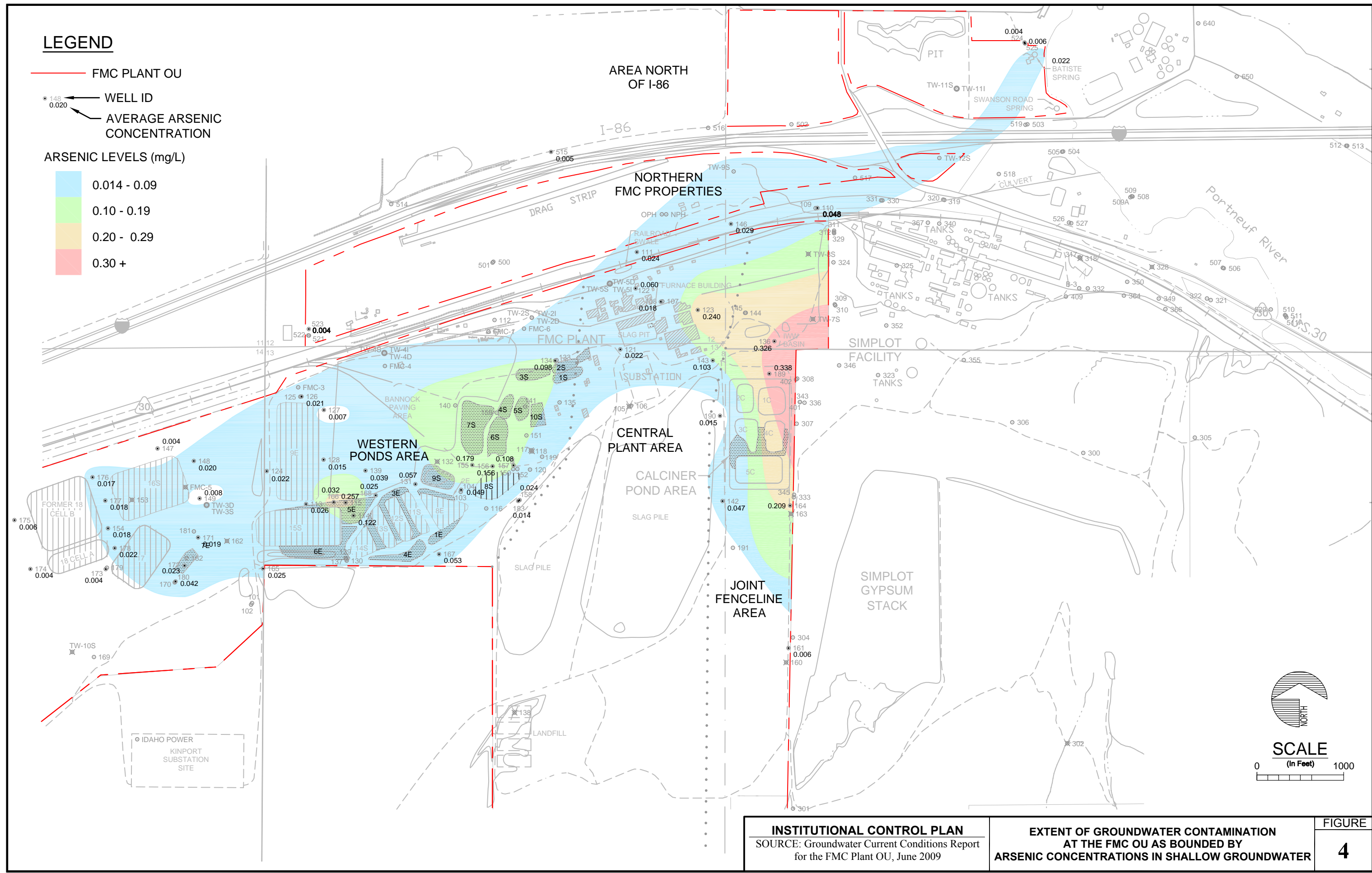
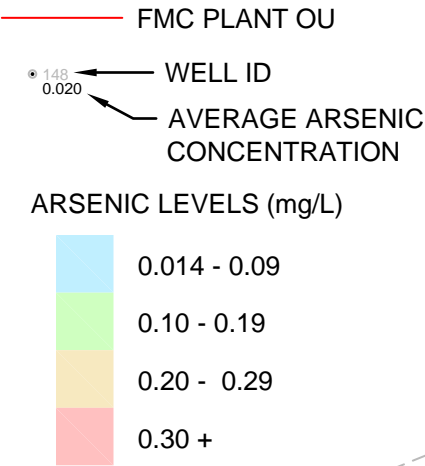








LEGEND

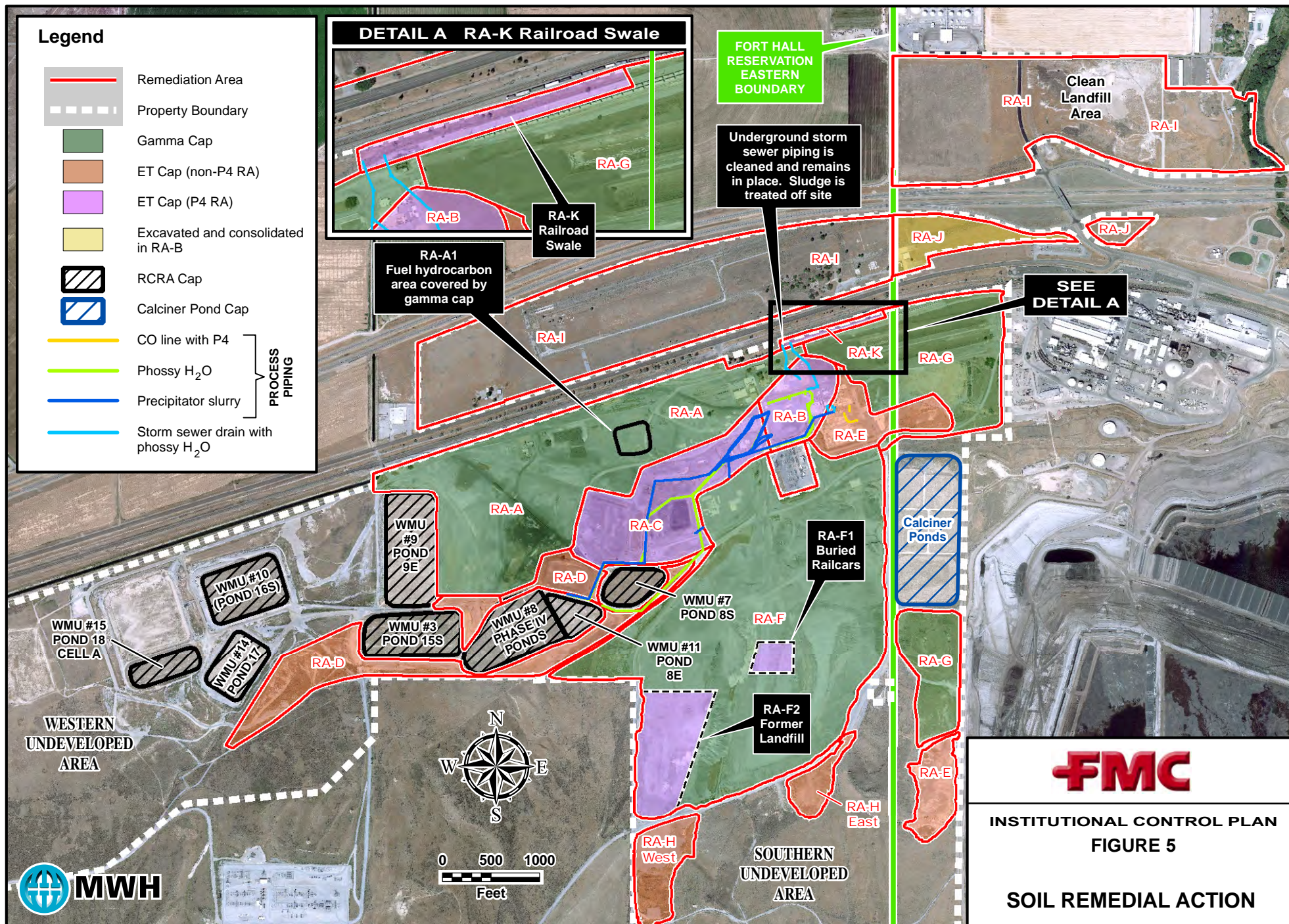


**INSTITUTIONAL CONTROL PLAN**  
SOURCE: Groundwater Current Conditions Report  
for the FMC Plant OU, June 2009

**EXTENT OF GROUNDWATER CONTAMINATION  
AT THE FMC OU AS BOUNDED BY  
ARSENIC CONCENTRATIONS IN SHALLOW GROUNDWATER**

**FIGURE  
4**

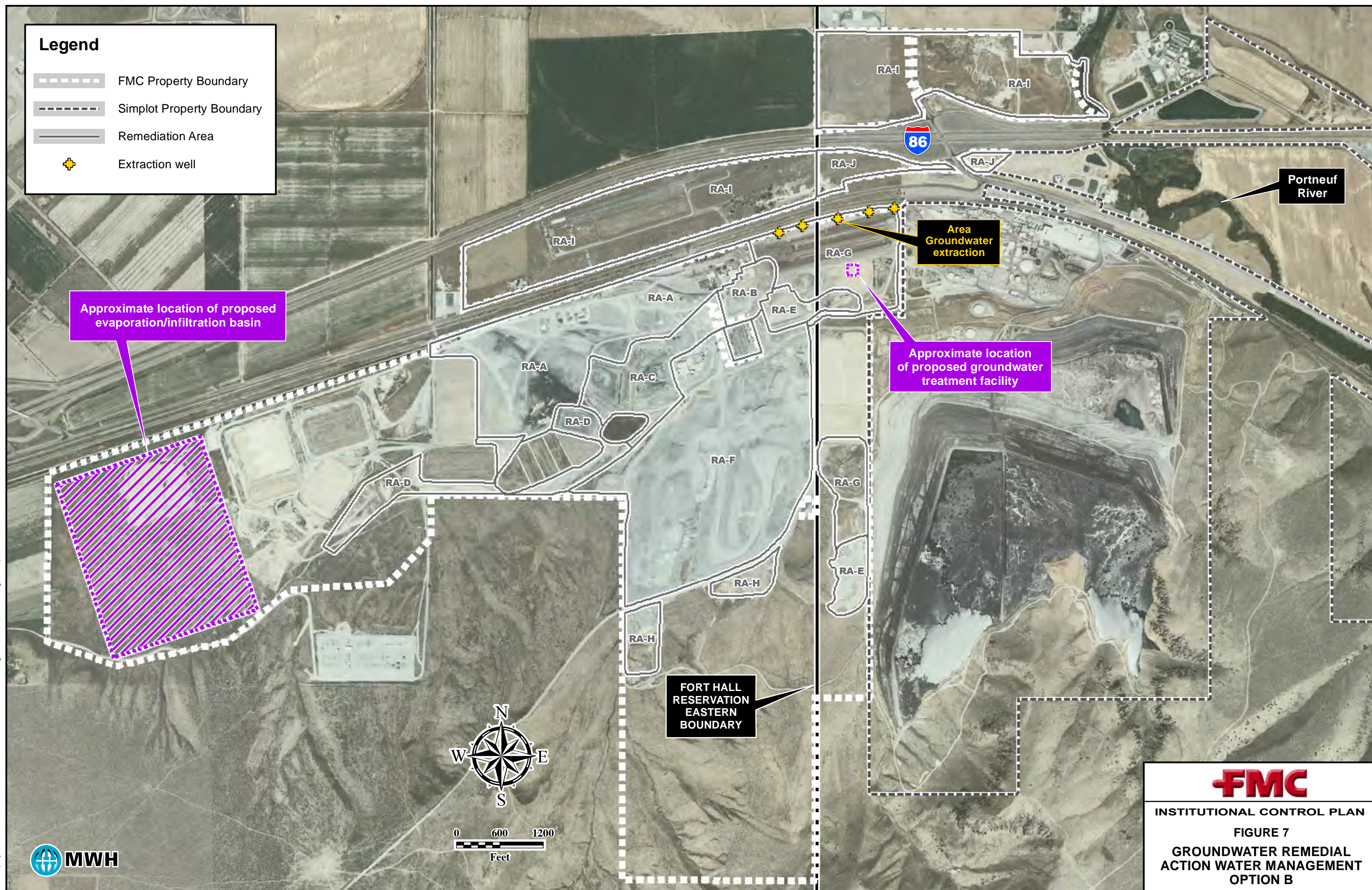








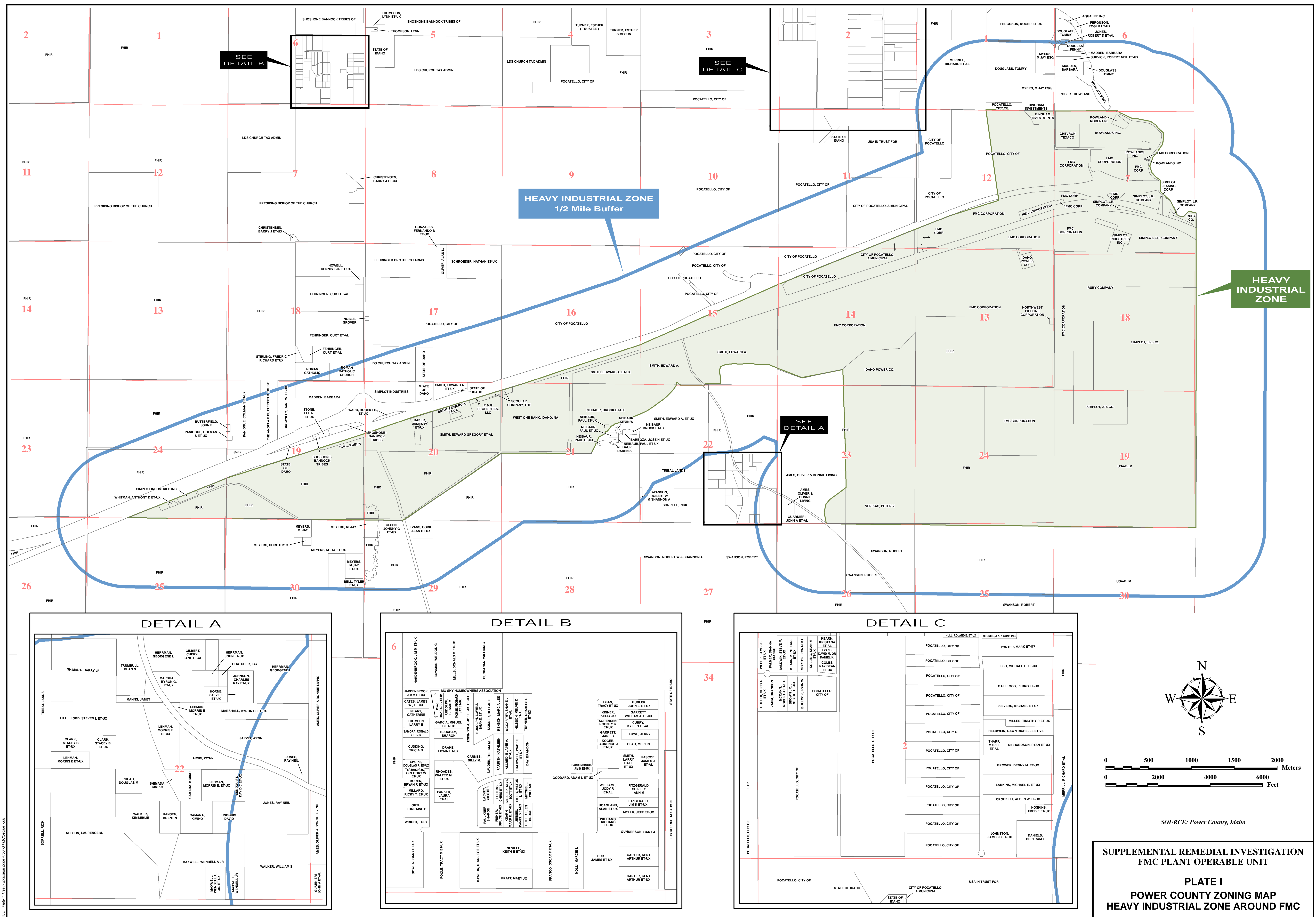






## **APPENDIX A**

### **POWER COUNTY CURRENT ZONING AND LAND USE AMENDMENT TO POWER COUNTY HEAVY INDUSTRIAL ZONE: PERMITTED USES PCDA/EPA CORRESPONDENCE (SRI REPORT APPENDIX A)**



**RESOLUTION #2005-03****AMENDMENT TO POWER COUNTY HEAVY  
INDUSTRIAL ZONE: PERMITTED USES**

WHEREAS, the County Commission of Power County is interested in the economic health of the community and its citizens; and

WHEREAS, the Power County Planning and Zoning commission considered and approved an amendment to the Power County Development Code on March 1, 2005, at public hearing wherein said ordinance was amended as follows:

10-5-1: SCOPE; PURPOSE: This Chapter establishes the Heavy Industrial (HI) Zoning District, the purpose of which is to provide adequate, appropriate area for industrial uses that have a significant nuisance potential. See the "Industrial Lands" policy statement of the Comprehensive Plan for further clarification of the intent of this Zoning District. (Ord. 98-01, 7-13-1998)

10-5-2: PERMITTED USES: Due to the potential nuisances and hazards associated with heavy industrial uses, certain uses implemented at new uses proposed in the HI Zoning District shall require a special use permit. The permitted uses in this Zoning District shall be:

A. Manufacturing, processing or energy generation facilities that do not:

i. Require movement of a product, by-product or raw materials to or from a site by highway transportation other than via a state or federal highway.

ii. Do not produce airborne or waterborne pollutants that exceed the limits established by state or federal law and possess any necessary permits required by law.

iii. Do not produce external environmental effects such as noise, light (more clearly expressed - these are examples) beyond those impacts traditionally resulting from the operation of light manufacturing uses conducted within enclosed facilities.

B. The repair, remodeling, and expansion, but not change of use, except to a use with less external impact, of existing uses.

C. Accessory uses and structures customarily associated with the uses permitted in the HI Zoning District.

**Instrument # 187342**

POWER COUNTY, IDAHO

2005-06-28

03:43:24 No. of Pages: 2

Recorded for: POWER COUNTY

CHRISTINE STEINLICHT

Ex-Officio Recorder Deputy

Fee: 0.00

*Maryann Schelke*



D. Major and minor utility installations (Ord. 98-01, 7-13-1998)

10-5-3: SPECIAL PERMIT USES: Any industrial use meeting the following criteria: ~~shall be permitted upon approval of a special use permit~~

Industrial Uses not otherwise permitted outright

(Ord. 98-01, 7-13-1998)

10-5-4: PROHIBITED USES: All uses not permitted by Section 10-5-2 or 10-5-3 of this Chapter shall be prohibited. (Ord. 98-01, 7-13-1998);

WHEREAS, the Commissioners find that the proposed amendment is consistent with the comprehensive plan; and

NOW, THEREFORE, BE IT RESOLVED, that the County Commission of Power County hereby approves the amendment to the Power County Development Code as stated herein.

PASSED AND ADOPTED in regular session of the Board of Power County Commissioners June 13<sup>th</sup> 2005.

SUPPORT RESOLUTION

Ken Estep  
KEN ESTEP, Chairman

X YES \_\_\_\_\_ NO

VICKI L. MEADOWS

\_\_\_\_\_ YES \_\_\_\_\_ NO

Ray Zimmerman  
RAY ZIMMERMAN

X YES \_\_\_\_\_ NO

ATTEST:

Christine Steinlicht  
CHRISTINE STEINLICHT, Clerk



10-5-3

10-5-6

10-5-3: **SPECIAL PERMIT USES:** Any industrial use shall be permitted upon approval of a special use permit. (Ord. 98-01, 7-13-1998)

10-5-4: **PROHIBITED USES:** All uses not permitted by Section 10-5-2 or 10-5-3 of this Chapter shall be prohibited. (Ord. 98-01, 7-13-1998)

10-5-5: **SPECIFICATION STANDARDS:** Note that the performance standards of subsections 10-5-6A3 and B of this Chapter affect the placement of buildings. (Ord. 98-01, 7-13-1998)

10-5-6: **PERFORMANCE STANDARDS:**

A. Specific To The HI Zoning District:

1. Impact On Existing Residential Areas: Sites that are within two thousand six hundred forty feet (2,640') of an existing residential area should not be added to the HI Zoning District. Exception: The PZC may waive this requirement for sites where the landscape provides an effective separation of less than two thousand six hundred forty feet (2,640').

2. Signs: See Appendix A, Section 10-17-1 of this Title, for sign standards for the HI Zoning District.

3. Landscaped Buffers: See subsection 10-13-5D of this Title for buffering standards for the HI Zoning District.

10-2-2  
PAGE 14

4. Surface Mines: The expansion or establishment of a surface mine shall be in compliance with the "Rules and Regulations Governing Exploration and Surface Mining Operations in Idaho", promulgated by the State Board of Land Commissioners.

5. Confined Feeding Operations: The expansion or establishment of a confined feeding operation shall be in compliance with the "Idaho Waste Management Guidelines for Confined Feeding Operations", published by the Idaho Department of Health and Welfare, Division of Environmental Quality.

10-5-6

10-5-6

6. Land Application Of Wastewater: The expansion or establishment of a field for the application of wastewater shall be in compliance with the "Guidelines for Land Application of Municipal and Industrial Wastewater", published by the Idaho Department of Health and Welfare, Division of Environmental Quality.

7. Existing Residences In Restricted Areas: Existing residences located within specified restricted areas (for hazards or nuisances) may be destroyed and replaced but no new residences will receive permits to build in these areas.

- B. County-Wide: All developments in the HI Zoning District are subject to the County-wide performance standards of this Title, as applicable. (Ord. 98-01, 7-13-1998)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

May 19, 2008

Reply To: ECL-113

Kent Rudeen  
Chairman  
Power County Development Authority  
P.O. Box 621  
American Falls, ID 83211

Re: Eastern Michaud Flats Superfund Site

Dr. Mr. Rudeen,

This follows the May 8, 2008 conference call with EPA-Region 10 and the Power County Development Authority (PCDA). We appreciated the time taken by the board and director to discuss the current status of Superfund activities ongoing at the Eastern Michaud Flats site, in particular property owned by FMC north of I-86.

We look forward to our agreed upon meeting in July to further discuss the various factors that influence the schedule for eventual development of properties of interest to PCDA. I have informed Barbara Ritchie of our plans to meet with PCDA and FMC.

We will be in the Pocatello area the week of July 28. We have public meetings scheduled for the evenings of July 29 and 30. We would be available to meet with PCDA the morning of July 28 or the afternoon of July 29. We want to schedule this meeting as soon as possible. Determining the date and time to meet will be easiest to accomplish via email. I can be contacted at email: [lynch.kira@epa.gov](mailto:lynch.kira@epa.gov) and telephone: 206-553-2144.

Sincerely,

Kira Lynch  
EMF Superfund Project Manager

cc: Barbara Ritchie, FMC





**Power County Development Authority**  
**PO Box 621**  
**American Falls, ID 83211**

**Board of Directors**

*Brett Crompton*  
*Bill Meadows*  
*Kent Rudeen*  
*Ben Strand*

April 15, 2008

Kira Lynch  
US EPA Region X  
1200 Sixth Avenue, Suite 900  
Office of Environmental Cleanup (ECL-113)  
Seattle, Washington 98101

Dear Kira:

PCDA is looking forward to our conference call on May 7, 2008 and your later visit, to discuss current and planned activities at EMF. We are also pleased to learn that EPA continues to support redevelopment at EMF and especially those parcels conveyed by FMC to PCDA.

One matter we wanted to clarify before our call so that we can move the ball forward, is the type of redevelopment that is appropriate for the EMF properties. The area is zoned by Power County as "Heavy Industrial." Given this zoning designation and the property's historical use, PCDA is only interested in heavy industrial, light industrial, or warehousing/distribution uses.

We are concerned that EPA may have the impression that there may be future residential development on the properties. Our zoning code specifically prohibits residential development in the Heavy Industrial zone and in areas within one-half mile of any Heavy Industrial zone in Power County. Attached is a map which defines the Heavy Industrial zone around EMF.

This is an important ground rule which PCDA supports and we wanted to make sure EPA was aware of the Power County Code requirements and PCDA redevelopment objectives.

We look forward to visiting with you, and if there is any information you would like us to review prior to our call, please let me know so we can be as productive as possible. PCDA is anxious to move forward.

Sincerely,

*Kent Rudeen*  
Kent Rudeen, Chairman

Coordinator  
Valorie Watkins  
208 238 1278  
[watkins50@cablone.net](mailto:watkins50@cablone.net)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

20 February 2008

Reply To: ECL-117

Kent Rudeen  
Chairman  
Power County Development Authority  
P.O. Box 621  
American Falls, ID 83211

Re: Eastern Michaud Flats Superfund Site

Dear Mr. Rudeen,

This is in response to your January 28, 2008, letter regarding portions of FMC's property deeded to the Power County Development Authority (PCDA). EPA has supported and continues to support appropriate development and/or redevelopment of sites that have been cleaned-up or those for which no cleanup is needed.


As you mentioned in your letter, EPA recognized the redevelopment potential of the Eastern Michaud Flats Superfund (EMF) site. To support this effort, EPA awarded a grant to the Bannock Development Corporation to help fund the Idaho Optimum Initiative website, complete a stakeholder involvement process, and complete a scope of work to develop a master plan for redeveloping the site.

However, we also recognize that the EMF site has complicated environmental and technical issues. In addition, there are sensitive jurisdictional issues that overlay the process. I recognize the PCDA's frustration with the time it is taking to bring the deeded properties to a point where you can move ahead with redevelopment planning.

Site characterization is a key step in the cleanup process. Characterizing the FMC site has required a significant amount of data collection that must be carefully analyzed to understand the nature and extent of contamination and to identify potential options for remediation. A formal document called the supplemental Remedial Investigation and Feasibility Study (RI/FS) will delineate the type and extent of contamination and present cleanup options to assure the protection of human health and the environment. The current schedule calls for the supplemental RI/FS to be completed by the summer of 2009. Reuse options that PCDA wants to consider for deeded land can be incorporated into the Feasibility Study analysis. However, it is neither practical nor appropriate to identify any of the FMC site as "ready for reuse" until the RI/FS has been completed.

EPA will gladly accept your invitation to meet on this matter. I have asked our Remedial Project Manager (RPM) for the EMF site, Kira Lynch, to coordinate the logistics for a future meeting. Since Kira has no immediate plans to be in the Pocatello area, I suggest that you begin this dialogue with a conference call in the very near future. Ms. Lynch will be contacting you to arrange for such a call. You also can contact her directly at 206-553-2144 or email: [lynch.kira@epa.gov](mailto:lynch.kira@epa.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Lori Cohen", is written over the typed name.

Lori Cohen, Associate Director  
Office of Environmental Cleanup



**Power County Development Authority**  
**PO Box 621**  
**American Falls, ID 83211**

January 28, 2008

**Board of Directors**

*Brett Crompton*  
*Bill Meadows*  
*Kent Rudeen*  
*Ben Strand*

Elin D. Miller, Administrator  
Region X  
Environmental Protection Agency  
1200 6<sup>th</sup> Avenue  
Seattle, WA 98101

Dear Ms. Miller:

It's been nearly a year since we last wrote to you about the Michaud Flats Superfund Site in Power County, Idaho – specifically the property that once was the location of the FMC Corporation's phosphorous plant. As you may recall, a portion of FMC's property was deeded to the Power County Development Authority (PCDA) for redevelopment. Such was the excitement surrounding this redevelopment opportunity, EPA designated EMF as its number one Superfund redevelopment site in the region.

Of particular concern to us is that a year has now passed and we are no further along in answering prospective developers' questions as to final remediation on the property. While we recognize that there are ongoing issues to be resolved, we would welcome attention and action on those parcels deeded to PCDA which hold the most promise for immediate redevelopment. We have a land transfer agreement with FMC for redevelopment on those properties (which are located outside the Fort Hall Reservation), and we are hindered by lack of a schedule of action and a timeline so that we can begin to plan for redevelopment and market the property. We are aware that EPA has employed "multiple RODS" and provided "Ready for Re-Use" designations at other Superfund sites to achieve redevelopment objectives. We would like the agency to consider a path forward for the site that facilitates redevelopment decision making in the near term horizon.

We would welcome an opportunity to meet with you or your staff to further discuss these issues, and look forward to participating in the meeting scheduled by EPA in Pocatello, Idaho, February 12/13, 2008, to discuss these issues. Thank you for your help in this matter. We look forward to your response.

Sincerely,

Kent Rudeen, Chairman  
Power County Development Authority

Coordinator  
Valorie Watkins  
208 238 1278  
[watkins50@cablone.net](mailto:watkins50@cablone.net)

cc: Michelle Pirzadeh

## **APPENDIX B**

**DRAWING 41815 – AREA PLAN BOUNDARY SURVEY,  
DEEDS AND EASEMENTS,  
FMC POCA TELLO PLANT PROPERTY**



[illegible]

## **APPENDIX C**

### **FMC OU - IMPLEMENTED (RECORDED) ENVIRONMENTAL COVENANTS AND NOTICES**



163375

Ref. <u>163375</u> Date <u>APR 1 8 1955</u> By <u>Mr. Hiney</u> Title <u>Notary Public</u>
---

Reference: Instrument Number 155162

COVENANT RESTRICTING USE OF PROPERTY

FMC Corporation ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Number (the "Property"), hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the Property.

1. Background, Purpose. The Property is located at or near the site of an elemental phosphorus plant in Power County, Idaho (the "Facility") that Covenantor has been operating since 1949. The covenants, conditions and restrictions set forth herein are necessary to ensure the development of the Property in a manner consistent with the current use and character of the Facility.
2. Covenant Restricting Use. The use and development of the Property and every portion thereof shall be limited to any industrial and/or commercial use as is then permitted by applicable valid governmental zoning ordinances. The Property shall not be used or developed for any residential purposes.
3. Covenant to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.
4. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be subject to the covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors, transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.
5. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless each such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.
6. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming



by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

7. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated this 17<sup>th</sup> day of March, 1995.

FMC CORPORATION

By: [Signature]  
Its: Plant Manager

STATE OF IDAHO

COUNTY OF Pannock

ss.

I certify that I know or have satisfactory evidence that Paul R. Goshorn is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Plant Manager of Fmc Corporation, and that the instrument was the free and voluntary act of said corporation.

Giver under my hand and official seal this 17<sup>th</sup> day of April, 1995.

[Signature]  
NOTARY PUBLIC in and for the State  
of Idaho, residing at  
Pocatello, Idaho  
My appointment expires Sept. 16, 2000

163378

Doc. #	100-1013
Vol. #	FMC 1003
APR 1 8 1955	
RECORDED	
INDEXED	

Reference: Instrument Number 155161

COVENANT RESTRICTING USE OF PROPERTY

FMC Corporation ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Number (the "Property"), hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the Property.

1. Background, Purpose. The Property is located at or near the site of an elemental phosphorus plant in Power County, Idaho (the "Facility") that Covenantor has been operating since 1949. The covenants, conditions and restrictions set forth herein are necessary to ensure the development of the Property in a manner consistent with the current use and character of the Facility.

2. Covenant Restricting Use. The use and development of the Property and every portion thereof shall be limited to any industrial and/or commercial use as is then permitted by applicable valid governmental zoning ordinances. The Property shall not be used or developed for any residential purposes.

3. Covenant to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

4. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be subject to the covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors, transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

5. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless each such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.

6. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming

by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

7. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated this 17<sup>th</sup> day of March, 1995.

April  
FMC CORPORATION

By: [Signature]  
Its: Plant Manager

STATE OF IDAHO )  
COUNTY OF Bannock ) ss.

I certify that I know or have satisfactory evidence that Paul R. Yochum is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Plant Manager of FMC Corporation, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 17<sup>th</sup> day of April, 1995.

Joan Rodriguez  
NOTARY PUBLIC in and for the State  
of Idaho, residing at  
Pocatello, Idaho  
My appointment expires April 16, 2000

163379

APR 1 8 1955  
F.M.C. Corp.  
K. H. H. H.

Reference: Instrument Number 89700

COVENANT RESTRICTING USE OF PROPERTY

FMC Corporation ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Number (the "Property"), hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the Property.

1. Background, Purpose. The Property is located at or near the site of an elemental phosphorus plant in Power County, Idaho (the "Facility") that Covenantor has been operating since 1949. The covenants, conditions and restrictions set forth herein are necessary to ensure the development of the Property in a manner consistent with the current use and character of the Facility.

2. Covenant Restricting Use. The use and development of the Property and every portion thereof shall be limited to any industrial and/or commercial use as is then permitted by applicable valid governmental zoning ordinances. The Property shall not be used or developed for any residential purposes.

3. Covenant to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

4. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be subject to the covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors, transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

5. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless each such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.

6. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming

by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

7. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated this 17<sup>th</sup> day of April, 1995.

FMC CORPORATION

By: [Signature]  
Its: Plant Manager

STATE OF IDAHO )

COUNTY OF Bennock ) ss.

I certify that I know or have satisfactory evidence that Paul R. Yochum, is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Plant Manager of FMC Corporation, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 17<sup>th</sup> day of April, 1995.

[Signature: Joan Rodriguez]  
NOTARY PUBLIC in and for the State  
of Idaho, residing at  
Pocatello, Idaho  
My appointment expires Sept. 16, 2000

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163380

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JED 1 1955

Reference: Instrument Number 88431

COVENANT RESTRICTING USE OF PROPERTY

FMC Corporation ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Number (the "Property"), hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the Property.

1. Background, Purpose. The Property is located at or near the site of an elemental phosphorus plant in Power County, Idaho (the "Facility") that Covenantor has been operating since 1949. The covenants, conditions and restrictions set forth herein are necessary to ensure the development of the Property in a manner consistent with the current use and character of the Facility.

2. Covenant Restricting Use. The use and development of the Property and every portion thereof shall be limited to any industrial and/or commercial use as is then permitted by applicable valid governmental zoning ordinances. The Property shall not be used or developed for any residential purposes.

3. Covenant to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

4. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be subject to the covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors, transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

5. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless such such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.

6. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming

by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

7. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated this 17th day of March, 1995.

FMC CORPORATION

By: [Signature]  
Its: Plant Manager

STATE OF IDAHO

COUNTY OF Bannock

)  
) ss.  
)

I certify that I know or have satisfactory evidence that Paul E. Yodanis, is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Plant Manager of Fmc Corporation, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 17th day of April, 1995.

[Signature: Joan Rodriguez]  
NOTARY PUBLIC in and for the State  
of Idaho, residing at  
Pocatello, Idaho  
My appointment expires Sept. 15, 2000

74

163381

APR 1 1985  
F.M.C. Corp.

Reference: Instrument Number 138120

COVENANT RESTRICTING USE OF PROPERTY

FMC Corporation ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Number (the "Property"), hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the Property.

1. Background Purpose. The Property is located at or near the site of an elemental phosphorus plant in Power County, Idaho (the "Facility") that Covenantor has been operating since 1949. The covenants, conditions and restrictions set forth herein are necessary to ensure the development of the Property in a manner consistent with the current use and character of the Facility.

2. Covenant Restricting Use. The use and development of the Property and every portion thereof shall be limited to any industrial and/or commercial use as is then permitted by applicable valid governmental zoning ordinances. The Property shall not be used or developed for any residential purposes.

3. Covenant to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

4. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be subject to the covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors, transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

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6. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming

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by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

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Dated this 17th day of March, 1995.

April  
FMC CORPORATION

By: [Signature]  
Its: Plant Manager

STATE OF IDAHO )  
COUNTY OF Bannock ) ss.

I certify that I know or have satisfactory evidence that Paul E. Yochum, is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Plant Manager of Fmc Corporation, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 17th day of April, 1995.

[Signature]  
NOTARY PUBLIC in and for the State  
of Idaho, residing at  
Pocatello, Idaho  
My appointment expires Sept. 14, 2000

75

163383

8-1-42  
FMC Corp.

1942

Reference:

Instrument No. 87141, recorded in Book 115 of Deeds at page 285

*[Signature]*

COVENANT RESTRICTING USE OF PROPERTY

FMC Corporation ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Number (the "Property"), hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the Property.

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6. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether an successor in title or otherwise and whether voluntarily or by operation of law

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("Grantee"), and any person, corporation or other entity claiming by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

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Dated this 17<sup>th</sup> day of April 1995.

FMC CORPORATION

By: [Signature]  
Its: Plant Manager

STATE OF IDAHO )  
COUNTY OF Bannock ) ss.

I certify that I know or have satisfactory evidence that Paul R. Yochum, is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Plant Manager of FMC Corporation, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 17<sup>th</sup> day of April, 1995.

[Signature: Joan Rodriguez]  
NOTARY PUBLIC in and for the State  
of Idaho, residing at  
Bozelle, Idaho  
my appointment expires Sept. 16, 2000

183384

8-4-10-30  
FMC Corp.

183385

Reference: Instrument Number 93189

COVENANT RESTRICTING USE OF PROPERTY

FMC Corporation ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Number (the "Property"), hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the Property.

1. Background Purpose. The Property is located at or near the site of an elemental phosphorus plant in Power County, Idaho (the "Facility") that Covenantor has been operating since 1949. The covenants, conditions and restrictions set forth herein are necessary to ensure the development of the Property in a manner consistent with the current use and character of the Facility.

2. Covenant Restricting Use. The use and development of the Property and every portion thereof shall be limited to any industrial and/or commercial use as is permitted by applicable valid governmental zoning ordinances. The Property shall not be used or developed for any residential purposes.

3. Covenant to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

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5. Partial Sale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless such action resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.

6. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming

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Dated this 17th day of April, 1995.

FMC CORPORATION

By: [Signature]  
Its: Paul R. Yockum

STATE OF IDAHO

COUNTY OF Bannock

SS.

I, certify that I know Paul R. Yockum have satisfactory evidence that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as to FMC Corporation of the State of Idaho, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 17th day of April, 1995.

[Signature]

NOTARY PUBLIC in and for the State of Idaho, residing at Pocatello, Idaho  
My appointment expires April 16, 2000

168385

APR 11 1965  
FMC Corp.

Reference: Instrument Number 95234

COVENANT RESTRICTING USE OF PROPERTY

FMC Corporation ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Number (the "Property"), hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the Property.

1. Background, Purpose. The Property is located at or near the site of an elemental phosphorus plant in Power County, Idaho (the "Facility") that Covenantor has been operating since 1949. The covenants, conditions and restrictions set forth herein are necessary to ensure the development of the Property in a manner consistent with the current use and character of the Facility.

2. Covenant Restricting Use. The use and development of the Property and every portion thereof shall be limited to any industrial and/or commercial use as is then permitted by applicable valid governmental zoning ordinances. The Property shall not be used or developed for any residential purposes.

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COUNTY OF

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by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

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Dated this 17<sup>th</sup> day of April, 1995.

FMC CORPORATION

By: [Signature]  
Its: Plant Manager

STATE OF IDAHO )  
COUNTY OF Bannock ) ss.

I certify that I know or have satisfactory evidence that Paul R. Yochum, is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Plant Manager of FMC Corporation, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 17<sup>th</sup> day of April, 1995.

[Signature: Joan Rodriguez]  
NOTARY PUBLIC in and for the State of Idaho, residing at Pocatello  
My appointment expires April 16, 2000

Reference: Instrument No. 66252, recorded in Book 96 of Deeds at page 473 and  
Instrument No. 66253, recorded in Book 96 of Deeds at page 474

### **NOTICE AND COVENANTS RESTRICTING USE OF PROPERTY**

FMC Corporation ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Numbers, hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the property.

1. Notice. The property includes an area that has been used to manage hazardous waste regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. This area consists of a former surface impoundment known as Pond 8S where elemental phosphorus processing wastes have been covered by a low permeability cap. The limits of the RCRA cap area are shown on the attached plat. The area within this perimeter, referred to herein as the "Property," is subject to land use restrictions under Subpart G of Title 40 of the Code of Federal Regulations. The Property encompasses the limits of the final cap and an area at least 20 feet outside the anchor trench as shown on the Survey Plat, Instrument Number 174026, recorded in Book 2 of Deeds at Page 242.

2. Type, location and quantity of the hazardous wastes. The hazardous wastes disposed of at the Property consist of elemental phosphorus mineral processing wastes that exhibit hazardous characteristics. These wastes are located beneath the limits of the as-built RCRA cap as shown on the Survey Plat, Instrument Number 174026, recorded in Book 2 of Deeds at Page 242. The total quantity of hazardous waste located at the Property is approximately 36.4 acre-feet.

3. Covenants Restricting Use. Property use and development inconsistent with the restrictions established under Subpart G of Title 40 of the Code of Federal Regulations shall be prohibited. No activity or development shall take place with respect to the Property that would jeopardize the integrity of the installed cap or interfere with ongoing cap maintenance and monitoring. Any subsurface intrusion at the Property is prohibited.

4. Covenants to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

5. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be subject to the notice, covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors,

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INSTRUMENT #	
TIME	7:42 pm
REQ. OF	James L. Lister
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POWER COUNTY, IDAHO	
BY	[Signature]
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transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

6. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless each such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.

7. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

8. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. This instrument does not limit or otherwise affect prior land use restrictions that have been placed on the Property. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated this 17<sup>th</sup> day of December, 1999.

FMC CORPORATION

By: 

Its: Plant Manager

STATE OF IDAHO

)

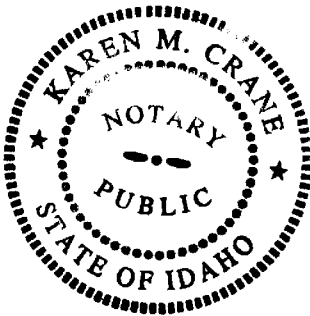
) ss.

COUNTY OF POWER

)

I certify that I know or have satisfactory evidence that Paul Yochum is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Plant Manager of FMC Corp., and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 17<sup>th</sup> day of December, 1999.



Karen M. Crane

NOTARY PUBLIC in and for the State of Idaho,  
residing at 801 Jesse Pl.  
My appointment expires 2005

Instrument No. 66252

## WARRANTY DEED

THIS INDENTURE, made this 30th day of December, in the year of our Lord, One and Nine Hundred and Forty Seven, between ROY LINDLEY and BERTHA LINDLEY, his wife, Pocatello, County of Bannock, State of Idaho, the parties of the first part, and CHLORINE PRODUCTS CORPORATION, a corporation of New York, County of New York, State of New York the party of the second part;

WITNESSETH: That the said parties of the first part for and in consideration of ONE DOLLAR AND OTHER VALUABLE CONSIDERATION, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, Grant, Bargain, Sell and Confirm unto said party of the second part, and to its successors and assigns All that certain lot, piece or parcel of land situate, lying and being in the County of Power, State of Idaho, bounded and more particularly described as follows, to-wit:

All of the Northwest Quarter (NW $\frac{1}{4}$ ) of Section 13, <sup>Indexed</sup> Township 6 South, Range 33 E.B.M., lying South of the Oregon Short Line Railroad right-of-way, now the Union Pacific Railroad Company, as shown by the map on file in the Office of the County Surveyor or County Recorder of either Power or Bannock County, SUBJECT, HOWEVER, to easements in favor of Mountain States Telephone and Telegraph Company and American Telephone and Telegraph Company of Wyoming.

Immediate possession, and exclusive possession, to be given forthwith.

U.S.I.R. Stamps in the amount of \$23.65 affixed and cancelled.

Together with all and singular, the tenements, hereditaments and appurtenances unto belonging or in anywise appertaining, and the rents, issues and profits there

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and privileges thereunto incident unto the said party of the second part and to its successors and assigns forever and the said parties of the first part and their heirs and assigns warrant the said premises in the quiet, exclusive and immediate peaceable possession of the said party of the second part, its successors and assigns against the said parties of the first part and against anyone claiming through him against all and any persons whomsoever, lawfully claiming to own or entitled to the possession thereof or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the Presence of

O. R. BAUM

ROY LINDLEY  
BERTHA LINDLEY

STATE OF IDAHO )

COUNTY OF BANNOCK )

SS

On this 30th day of December, in the year 1947, before me, the undersigned, a Public in and for said County and State, personally appeared ROY LINDLEY and BERTHA LINDLEY, his wife, known to me to be the persons whose names are subscribed to the instrument, and acknowledged to me that they executed the same.

for 5

HAZEL STUART, Recorder

By Helen Elsenpeter, Deputy

Instrument No. 66253  
CORPORATION WARRANTY DEED

THIS INDENTURE, made this 29 day of December, in the year of our Lord one thousand nine hundred and Forty Seven, between EVANS INVESTMENT COMPANY, a corporation, a corporation duly organized and existing under the laws of the State of Idaho and having its principal office in Idaho at American Falls, in the County of Power party of the first part, and WESTVACO CHLORINE PRODUCTS CORPORATION a foreign corporation entitled to do business in the State of Idaho, party of the second part.

WITNESSETH, that the said party of the first part, having been hereunto duly authorized by resolution of its Board of Directors, for and in consideration of the sum of ONE DOLLAR AND OTHER VALUABLE CONSIDERATION DOLLARS lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, all the following described real estate situated in, County of State of Idaho, to-wit:

Indexed  
Northeast Quarter of Section 13, and all of that part  
and all of that portion of the South One half of the  
Southeast Quarter of Section 12 and, likewise, that  
portion of the Southeast Quarter of the Southwest  
quarter of Section 12, all in Township 6 South, Range  
33 E.B.M., lying South of the Oregon Short Line Railroad right of way as it now exists and as shown by the map, now known as the Union Pacific Railroad Company right of way, SUBJECT, HOWEVER, to any easements for power, electric light and telephone lines as they now exist and to the extent that the same are valid.

U.S.I.R. Stamps in the amount of \$22.00 affixed and cancelled.

TOGETHER, with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, and the reversion and reversions, remainders and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part,

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever. And the said party of the first part, and its successors, the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said party of the first part, and its successors, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, the party of the first part has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed by its Secretary in pursuance to said resolution the day and year first above written.

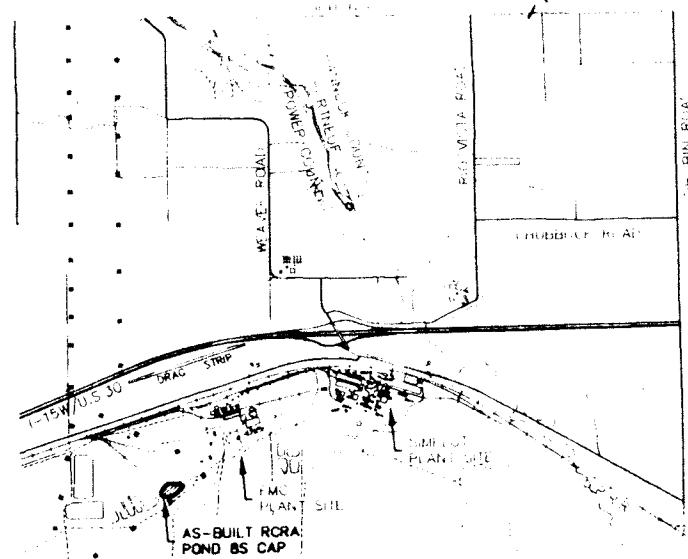
Signed, Sealed and Delivered in the Presence of

(SEAL) O. R. BAUM

EVANS INVESTMENT COMPANY, a  
corporation

By J. PAUL EVANS  
Its President

# **RECORD OF SURVEY PLAT** **A PARCEL OF LAND LOCATED IN THE SW 1/4 NE 1/4 & SE 1/4 NW 1/4,** **SECTION 13, T 6 S, R 33 E, B.M., POWER COUNTY**



**VICINITY MAP**  
 Scale: 1" = 5000'

## **LEGEND**

- Set 1/2" diameter rebar with a red plastic cap stamped "PLS 8075". Also set a metal fence post next to each rebar.
- ⊠ Found Indian Allotment Brass cap monument dated 1912
- Property lines
- - - Idaho Power Easement lines
- X — X Existing chain link fence lines
- P — Existing overhead power lines and poles
- (R- ) Record information per listed source

## **\*BASIS OF BEARINGS**

Assumed bearing of S88°57'21"E between the found Indian Allotment brass cap monuments marking the West 1/4 corner and the Center 1/4 corner of Section 13.

## **POND 8S RCRA CAP PARCEL**

4.47 Acres ± From Instrument #66252 & #66253

## **LEGAL DESCRIPTION**

A parcel of land located in the SW 1/4 NE 1/4 and the SE 1/4 NW 1/4, Section 13, T 6 S, R 33 E, B.M., Power County, Idaho, more particularly described as follows:

Commencing at the West 1/4 corner of section 13, said corner being marked by a 1912 Indian Allotment brass cap monument;  
 thence S 88°57'21" E along the Latitudinal centerline of section 13, 2653.26 feet to the Center 1/4 corner of section 13, said corner being marked by a 1912 Indian Allotment brass cap monument;  
 thence N 02°41'19" W, 779.66 feet to a 1/2-inch dia. rebar with a red plastic cap stamped "PLS 8075", said rebar marking the true point of beginning;  
 thence the following twenty courses, the end points of each course being marked by a 1/2-inch diameter rebar with a red plastic cap stamped "PLS 8075";  
 N 77°01'56" E, 83.59 feet; N 59°10'30" E, 62.27 feet;  
 N 45°36'32" E, 34.60 feet; N 53°44'44" E, 44.78 feet;  
 N 48°18'24" E, 119.54 feet; N 43°09'40" E, 130.99 feet;  
 N 06°47'36" E, 65.96 feet; N 33°29'00" W, 38.69 feet;  
 N 67°02'37" W, 39.24 feet; N 83°37'56" W, 126.00 feet;  
 S 86°00'42" W, 70.59 feet; S 88°52'52" W, 198.33 feet;  
 S 68°51'49" W, 50.36 feet; S 40°59'42" W, 161.91 feet;  
 S 34°32'52" W, 55.02 feet; S 13°15'01" W, 71.41 feet;  
 S 05°55'25" W, 55.04 feet; S 35°56'56" E, 38.22 feet;  
 S 49°40'44" E, 35.94 feet; S 61°14'16" E, 62.01 feet;  
 thence S 87°10'28" E, 171.41 feet to the true point of beginning.

Said parcel containing 4.47 acres more or less.

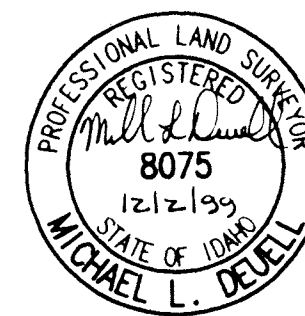
Limits of As-built RCRA cap, Pond 8S

centerline of liner anchor trench

SW 1/4 corner  
 Section 13  
 Inst. #91005635

Power Tower

CV 1/4 corner  
 Section 13



## **SURVEYOR'S CERTIFICATE**

I, Michael L. Deuell, PLS 8075 Idaho, Hereby certify that this plat correctly represents a survey made by me in conformance with law(s) chapter 19, Title 55, Idaho Code at the request of FMC Corporation.

## **NOTES**

- REFERENCE DOCUMENTS  
 -Deed Instrument numbers on file at the Power County Recorder's office: #66252, #66253, #72097 & #102360  
 -FMC Corporation drawing #40976 (R-FMC)
- All bearings and distances are measured unless otherwise noted.
- Idaho Power Company has an easement on the American Falls-Don (138 KV) line recorded as Instrument #72097. No reference to the width of the easement could be found.
- The property within the limits of the Survey Plat will be restricted from any post-closure use including but not limited to subsurface intrusion which could jeopardize the integrity of the RCRA cap or interfere with ongoing monitoring and maintenance activities.

## **COUNTY RECORDER**

Instrument No. 174026 Time 2:05pm Date 12-2-99

Book 2 Page 242 Fee 5.00

*Margaret Schelke, Deputy*  
 County Recorder

Record of Survey Plat prepared for FMC Corporation, Pond 8S final cap, located in the SW 1/4 NE 1/4, and the SE 1/4 NW 1/4, Section 13, T 6 S, R 33 E, B.M. Power County.

JOB No. 99-033	PRINT DATE:	DWG. No.
DRAWN BY: DZ	DATE: 11/11/99	SHEET 1 OF 1 SHEETS
CHECKED BY: JTE	DATE: 12/1/99	CALCULATED BY: MLD DATE: 11/11/99
PLOT SCALE: 1" = 40'	DATE PLOTTED: 11/11/99	BY: dz

**222**

## **A & E ENGINEERING INC.**

P.O. BOX 1327  
 POCATELLO, IDAHO 83204  
 PHONE: (208) 253-4226



Reference: Instrument No. 20005743 (Bannock County) and  
Instrument No. 174944 (Power County)

### **NOTICE AND COVENANTS RESTRICTING USE OF PROPERTY**

Astaris Idaho LLC ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Numbers, hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the property.

1. Notice. The property includes an area that has been used to manage hazardous waste regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. This area consists of a former surface impoundment known as Pond 9E where elemental phosphorus processing wastes have been covered by a low permeability cap. The limits of the RCRA cap area are shown on the attached plat. The area within this perimeter, referred to herein as the "Property," is subject to land use restrictions under Subpart G of Title 40 of the Code of Federal Regulations. The Property encompasses the limits of the final cap and an area at least 20 feet outside the anchor trench as shown on the Survey Plat, Instrument Number 20100185, recorded in Book 7 of Deeds at Page 1214 (Bannock County) and Instrument Number 176458, recorded in Book 2 of Deeds at Page 262 (Power County).

2. Type, location and quantity of the hazardous wastes. The hazardous wastes disposed of at the Property consist of elemental phosphorus mineral processing wastes that exhibit hazardous characteristics. These wastes are located beneath the limits of the as-built RCRA cap as shown on the Survey Plat, Instrument Number 20100185, recorded in Book 7 of Deeds at Page 1214 (Bannock County) and Instrument Number 176458, recorded in Book 2 of Deeds at Page 262 (Power County). The total quantity of hazardous waste located at the Property is approximately 17 acre-feet.

3. Covenants Restricting Use. Property use and development inconsistent with the restrictions established under Subpart G of Title 40 of the Code of Federal Regulations shall be prohibited. No activity or development shall take place with respect to the Property that would jeopardize the integrity of the installed cap or interfere with ongoing cap maintenance and monitoring. Any subsurface intrusion at the Property is prohibited.

4. Covenants to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

5. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be

subject to the notice, covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors, transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

6. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless each such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.

7. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

8. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. This instrument does not limit or otherwise affect prior land use restrictions that have been placed on the Property. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated this 9 day of January, 2001.

ASTARIS IDAHO LLC

By: 

Its: Plant Manager

20100371

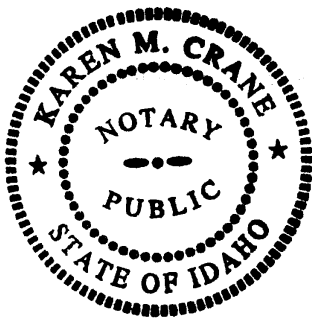
STATE OF IDAHO )

) ss.

COUNTY OF POWER )

I certify that I know or have satisfactory evidence that Paul R Yochum is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Plant Manager of Astoria Idaho, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 9<sup>th</sup> day of January, 2001.



Karen M. Crane

NOTARY PUBLIC in and for the State of Idaho,  
residing at 801 Jessie Place  
My appointment expires May 2005

20100371

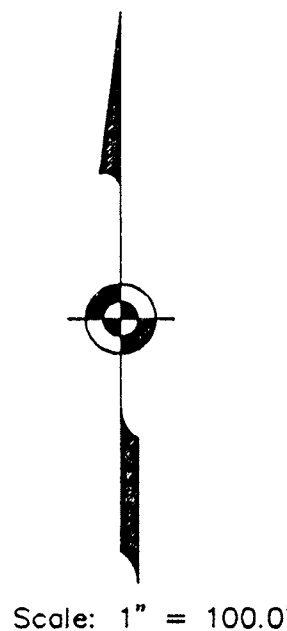
NO  
RECORDED AT REQUEST OF

Astoria  
2001 JAN 9 PM 3 58

OFFICIAL RECORD BOOK NO 173  
BANNOCK COUNTY IDAHO  
LARRY W GHAN RECORDER  
FEE 9.00 DEPUTY Jo

176490

INSTRUMENT #	
TIME	<u>4:35 p.m.</u>
REQ. OF	<u>Astoria</u>
JAN 09 2001	
BY	<u>Christine Steinhilber</u>
	DEPUTY
Pd. \$9.00	

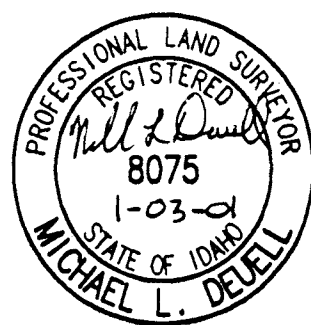


### NOTES

- REFERENCE DOCUMENTS
  - Deed Instrument numbers on file at the Power County Recorder's office: #57272, #60838, #60907, #66252, #85575 & 179444
  - Deed Instrument numbers on file at the Bannock County Recorder's office: #20005743
  - FMC Corporation drawing #40976
  - Record of Survey by A & E Engineering, (R-FMC) Inst. #174026 (Power County) (R-A&E-1)
  - Record of Survey by A & E Engineering, (R-A&E-2) Inst. #174692 (Power County)
  - Record of Survey by A & E Engineering, (R-A&E-2) Inst. #20003575 (Bannock County)
- All bearings and distances are measured unless otherwise noted.
- AT.&T. of Wyoming and Mountain States Telephone & Telegraph have blanket easements in the Northwest 1/4 of section 13. No communication utilities exist on the property shown on this Record of Survey at this time.
- The property within the limits of the Survey Plat will be restricted from any post-closure use including, but not limited to, subsurface intrusion which could jeopardize the integrity of the final cap or interfere with ongoing monitoring and maintenance activities.

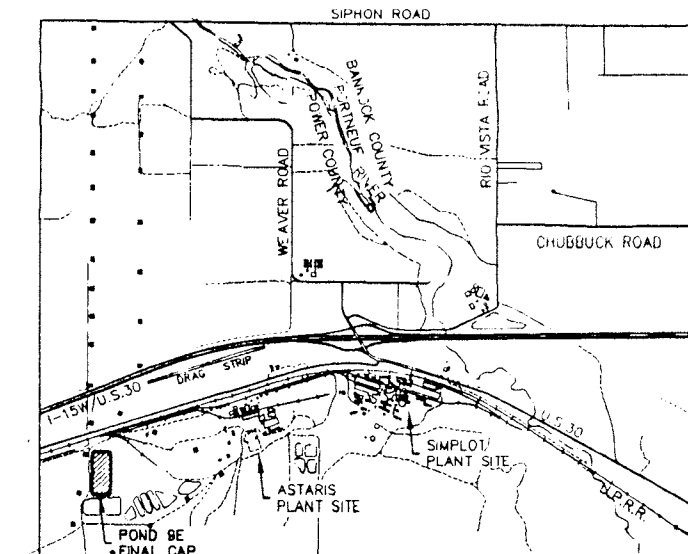
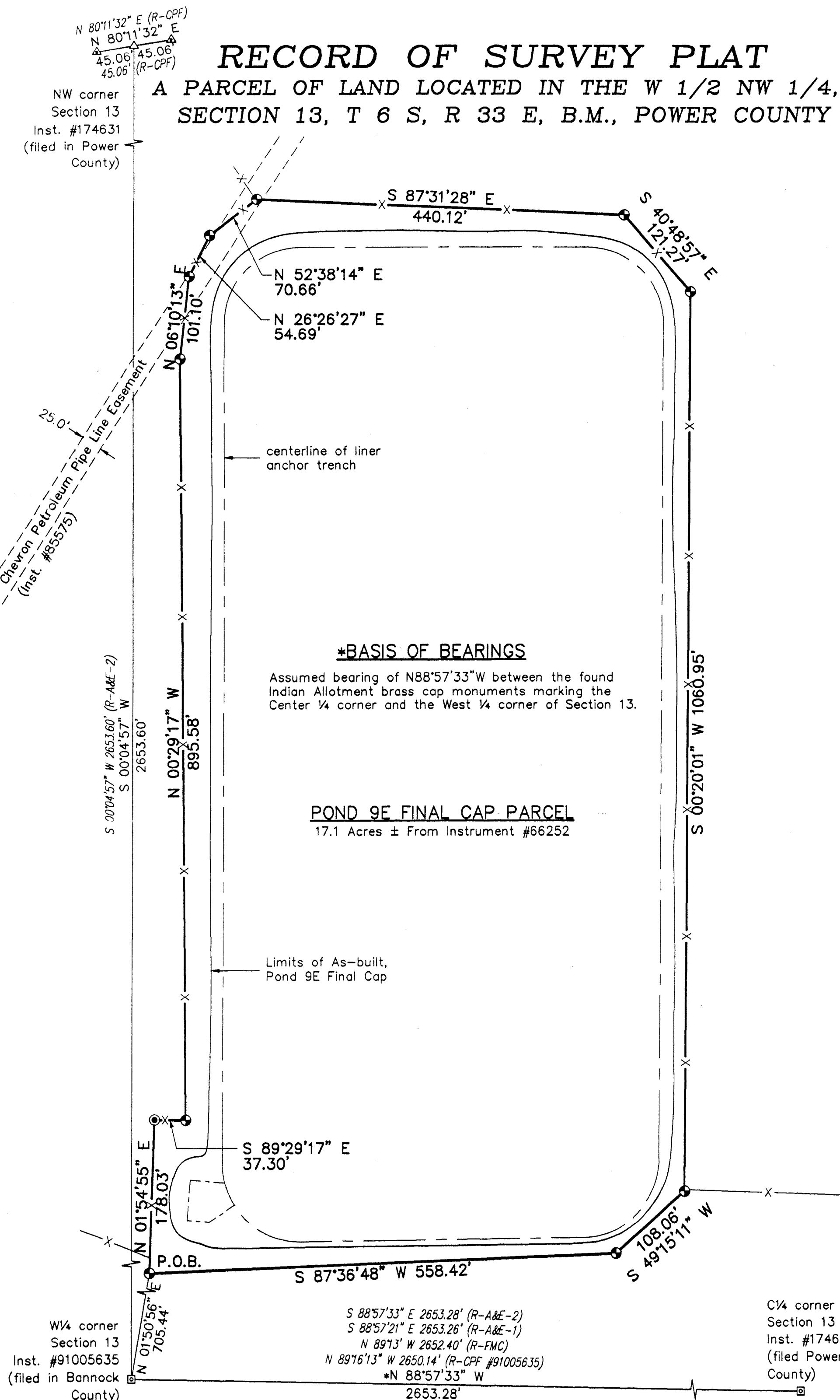
### LEGEND

- Set 5/8" diameter rebar with a red plastic cap stamped "PLS 8075"
  - Set P-K nail with an aluminum washer stamped "PLS 8075" in concrete fence corner anchor
  - Found Indian Allotment Brass cap monument dated 1912
  - Found Bureau of Indian Affairs aluminum cap monument
  - Calculated point, nothing set (point falls in canal)
- Boundary lines of Pond 9E Final Cap Parcel
- - - - - Easement lines
- X — X Existing chain link fence lines
- (R—) Record information from reference documents listed in note 1



### SURVEYOR'S CERTIFICATE

I, Michael L. Deuell, PLS 8075 Idaho, Hereby certify that this plat correctly represents a survey made by me in conformance with law(s) chapter 19, Title 55, Idaho Code at the request of Astaris Idaho, LLC.



VICINITY MAP  
Scale: 1" = 5000'

### LEGAL DESCRIPTION

A parcel of land located in the West 1/2 of the Northwest 1/4 of Section 13, T 6 S, R 33 E, B.M., Power County, Idaho, said parcel being more particularly described as follows:

Commencing at the Center 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 88°57'33" W along the Latitudinal centerline of said Section 13, 2653.28 feet to the West 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 1°50'56" E, 705.44 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence N 1°54'55" E, 178.03 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 89°29'17" E, 37.30 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence N 0°29'17" W, 895.58 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence N 6°10'13" E, 101.10 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence N 26°26'27" E, 54.69 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence N 52°38'14" E, 70.66 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 87°31'28" E, 440.12 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 40°48'57" E, 121.27 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 0°20'01" W, 1060.95 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 49°15'11" W, 108.06 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 87°36'48" W, 558.42 feet to the true point of beginning.

Said parcel containing 17.1 acres, more or less.

Said parcel being subject to a 25-foot wide underground pipeline easement to Salt Lake Pipeline Company, recorded in the Power County Clerk's office as instrument #85575.

### COUNTY RECORDER

Instrument No. 2000-009 Time 1531 Date 1-4-2001

Book 7 Page 1214 Fee \$5.00

County Recorder

Record of Survey Plat prepared for Astaris Idaho, LLC; Pond 9E final cap; located in the W1/2 of the NW1/4, Section 13, T 6 S, R 33 E, B.M. Power County.

JOB No. 2000-009	PRINT DATE: JAN 08 2001	DWG. No. 238
DRAWN BY: MLD	DATE: 11/30/00	SHEET 1 OF 1 SHEETS
CHECKED BY: JTE	DATE: 12/15/00	CALCULATED BY: MLD DATE: 10/27/00
PLOT SCALE: 1" = 100'	DATE PLOTTED: 1/03/01	BY: mld

### A & E ENGINEERING INC.

P.O. BOX 1327  
POCATELLO, IDAHO 83204  
PHONE: (208) 233-4226

Scale: 1" = 100.0'

### NOTES

#### 1. REFERENCE DOCUMENTS

- Deed Instrument numbers on file at the Power County Recorder's office: #57272, #60838, #60907, #66252, & #85575
- FMC Corporation drawing #40976 (R-FMC)
- Record of Survey by A & E Engineering, Inst. #174026 (Power County) (R-A&E-1)
- Record of Survey by A & E Engineering, Inst. #174692 (Power County) (R-A&E-2)
- Record of Survey by A & E Engineering, Inst. #20003575 (Bannock County) (R-A&E-2)

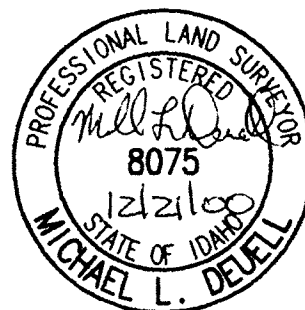
- 2. All bearings and distances are measured unless otherwise noted.
- 3. AT.&T. of Wyoming and Mountain States Telephone & Telegraph have blanket easements in the Northwest 1/4 of section 13. No communication utilities exist on the property shown on this Record of Survey at this time.
- 4. The property within the limits of the Survey Plat will be restricted from any post-closure use including, but not limited to, subsurface intrusion which could jeopardize the integrity of the final cap or interfere with ongoing monitoring and maintenance activities.

### LEGEND

- Set 5/8" diameter rebar with a red plastic cap stamped "PLS 8075"
- Set P-K nail with an aluminum washer stamped "PLS 8075" in concrete fence corner anchor
- ▣ Found Indian Allotment Brass cap monument dated 1912
- ▲ Found Bureau of Indian Affairs aluminum cap monument
- △ Calculated point, nothing set (point falls in canal)

- Boundary lines of Pond 9E Final Cap Parcel
- - - - - Easement lines
- X — X Existing chain link fence lines

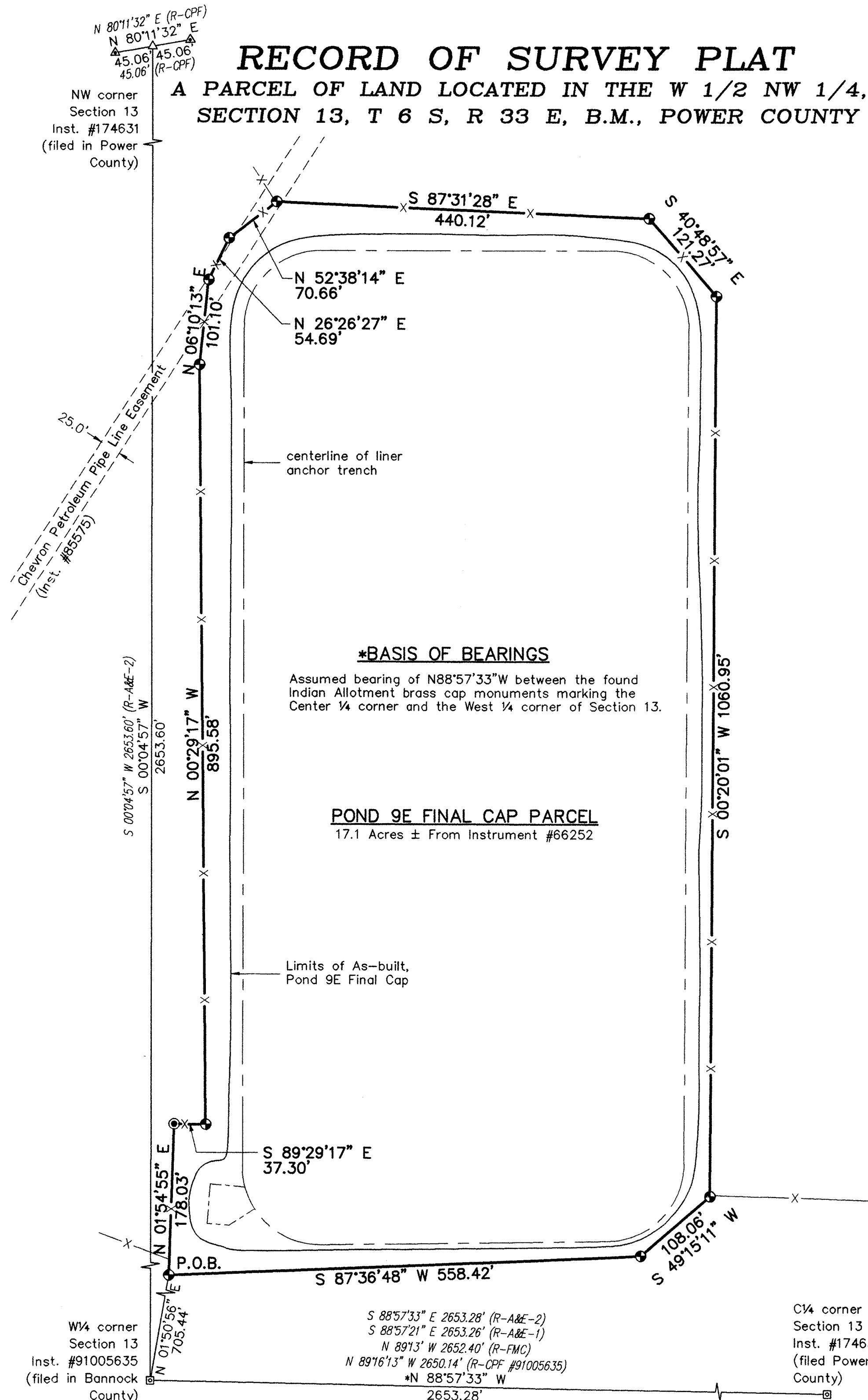
(R- ) Record information from reference documents listed in note 1



### SURVEYOR'S CERTIFICATE

I, Michael L. Deuell, PLS 8075 Idaho, Hereby certify that this plat correctly represents a survey made by me in conformance with law(s) chapter 19, Title 55, Idaho Code at the request of Astaris Idaho, LLC.

W1/4 corner  
Section 13  
Inst. #91005635  
(filed in Bannock  
County)

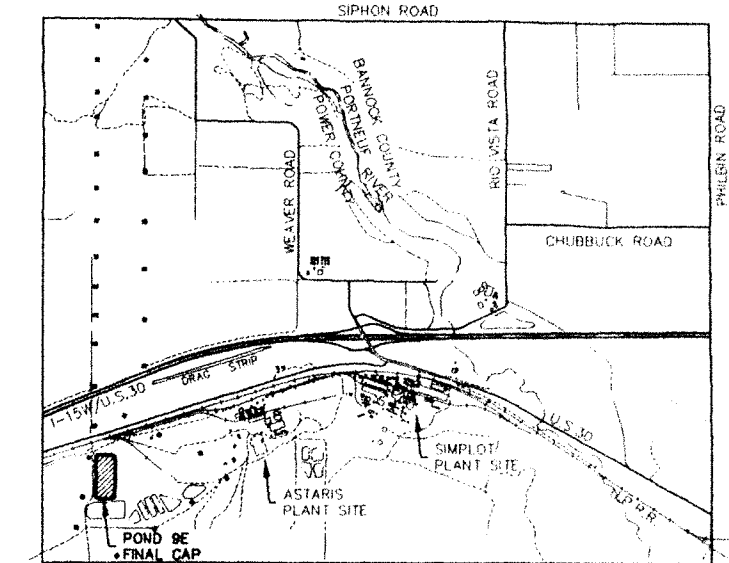


### \*BASIS OF BEARINGS

Assumed bearing of N88°57'33"W between the found Indian Allotment brass cap monuments marking the Center 1/4 corner and the West 1/4 corner of Section 13.

### POND 9E FINAL CAP PARCEL

17.1 Acres ± From Instrument #66252



VICINITY MAP  
Scale: 1" = 5000'

### LEGAL DESCRIPTION

A parcel of land located in the West 1/2 of the Northwest 1/4 of Section 13, T 6 S, R 33 E, B.M., Power County, Idaho, said parcel being more particularly described as follows:

Commencing at the Center 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 88°57'33" W along the Latitudinal centerline of said Section 13, 2653.28 feet to the West 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 1°50'56" E, 705.44 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075", said rebar marking the true point of beginning; thence N 1°54'55" E, 178.03 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 89°29'17" E, 37.30 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence N 0°29'17" W, 895.58 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence N 6°10'13" E, 101.10 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence N 26°26'27" E, 54.69 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 87°31'28" E, 440.12 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 40°48'57" E, 121.27 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 0°20'01" W, 1060.95 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 49°15'11" W, 108.06 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 87°36'48" W, 558.42 feet to the true point of beginning.

Said parcel containing 17.1 acres, more or less.

Said parcel being subject to a 25-foot wide underground pipeline easement to Salt Lake Pipeline Company, recorded in the Power County Clerk's office as instrument #85575.

### COUNTY RECORDER

Instrument No. 176386 Time 2:52 PM Date 12-27-00

Book 2 Page 259 Fee 5.00

Maurice Schulte  
County Recorder Deputy Clerk

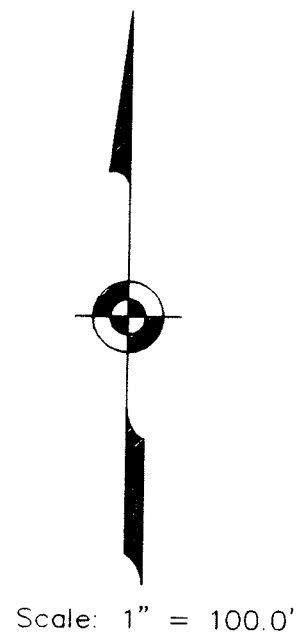
Record of Survey Plat prepared for Astaris Idaho, LLC; Pond 9E final cap; located in the W1/2 of the NW1/4, Section 13, T 6 S, R 33 E, B.M. Power County.

JOB No. 2000-009	PRINT DATE: DEC 27 2000	DWG. No. 236
DRAWN BY: MLD	DATE: 11/30/00	SHEET 1 OF 1 SHEETS
CHECKED BY: JTE	DATE: 12/15/00	CALCULATED BY: MLD DATE: 10/27/00
PLOT SCALE: 1" = 100'	DATE PLOTTED: 11/30/00	BY: mld

### A & E ENGINEERING INC.

P.O. BOX 1327  
POCATELLO, IDAHO 83204  
PHONE: (208) 233-4226



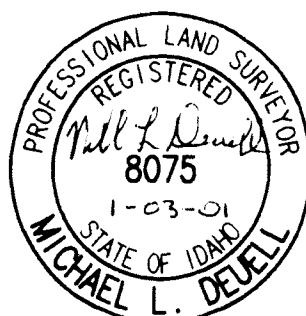


### NOTES

- REFERENCE DOCUMENTS
  - Deed Instrument numbers on file at the Power County Recorder's office: #57272, #60838, #60907, #66252, #85575 & 179444
  - Deed Instrument numbers on file at the Bannock County Recorder's office: #20005743
  - FMC Corporation drawing #40976
  - Record of Survey by A & E Engineering, (R-FMC) Inst. #174026 (Power County) (R-A&E-1)
  - Record of Survey by A & E Engineering, (R-A&E-2) Inst. #174692 (Power County)
  - Record of Survey by A & E Engineering, (R-A&E-2) Inst. #20003575 (Bannock County)
- All bearings and distances are measured unless otherwise noted.
- AT&T of Wyoming and Mountain States Telephone & Telegraph have blanket easements in the Northwest 1/4 of section 13. No communication utilities exist on the property shown on this Record of Survey at this time.
- The property within the limits of the Survey Plat will be restricted from any post-closure use including, but not limited to, subsurface intrusion which could jeopardize the integrity of the final cap or interfere with ongoing monitoring and maintenance activities.
- This survey was previously recorded in Power County as Instrument #176386. It is being re-recorded to reference the special warranty deed transferring title from FMC to Astaris Idaho, LLC.

### LEGEND

- Set 5/8" diameter rebar with a red plastic cap stamped "PLS 8075"
- Set P-K nail with an aluminum washer stamped "PLS 8075" in concrete fence corner anchor
- Found Indian Allotment Brass cap monument dated 1912
- ▲ Found Bureau of Indian Affairs aluminum cap monument
- △ Calculated point, nothing set (point falls in canal)
- Boundary lines of Pond 9E Final Cap Parcel
- - - Easement lines
- X Existing chain link fence lines
- (R- ) Record information from reference documents listed in note 1

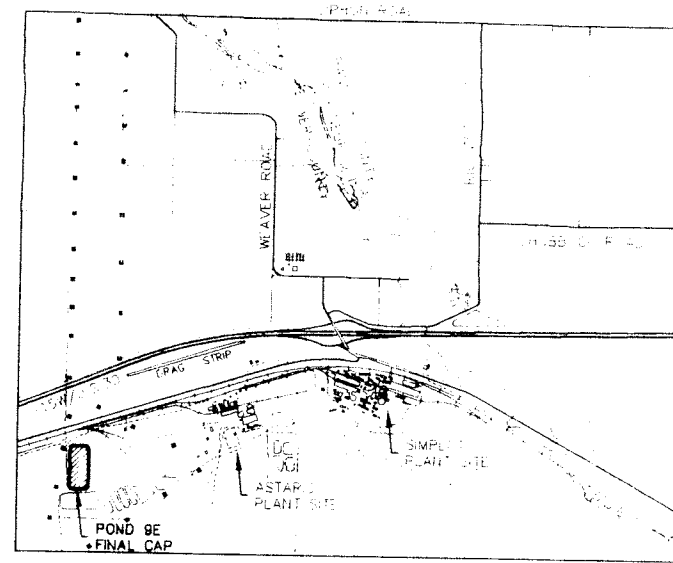
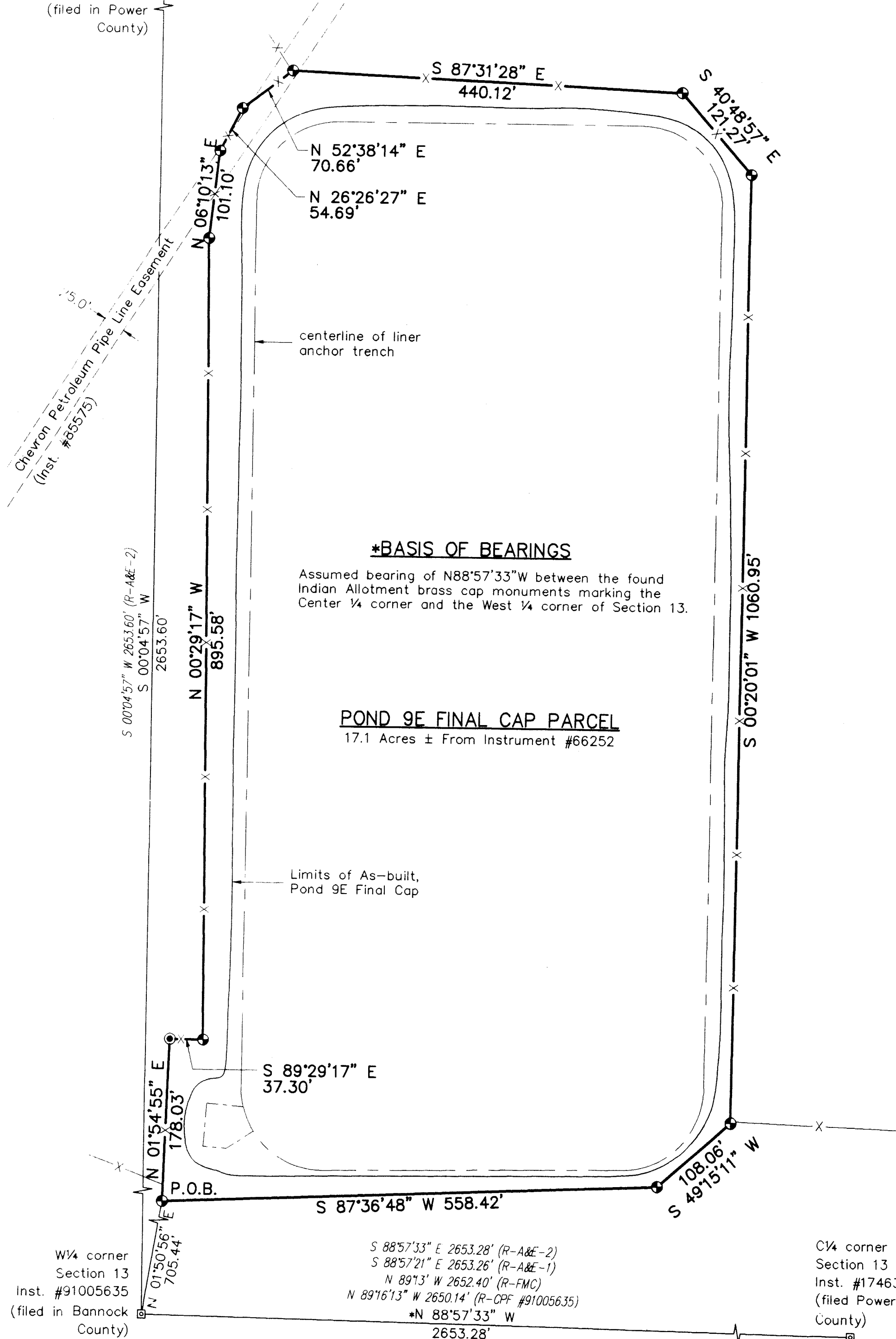


### SURVEYOR'S CERTIFICATE

I, Michael L. Deuell, PLS 8075 Idaho, Hereby certify that this plat correctly represents a survey made by me in conformance with law(s) chapter 19, Title 55, Idaho Code at the request of Astaris Idaho, LLC.

## RECORD OF SURVEY PLAT

### A PARCEL OF LAND LOCATED IN THE W 1/2 NW 1/4, SECTION 13, T 6 S, R 33 E, B.M., POWER COUNTY



### VICINITY MAP

Scale: 1" = 5000'

### LEGAL DESCRIPTION

A parcel of land located in the West 1/2 of the Northwest 1/4 of Section 13, T 6 S, R 33 E, B.M., Power County, Idaho, said parcel being more particularly described as follows:

Commencing at the Center 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 88°57'33" W along the Latitudinal centerline of said Section 13, 2653.28 feet to the West 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 1°50'56" E, 705.44 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075", said rebar marking the true point of beginning; thence N 1°54'55" E, 178.03 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 89°29'17" E, 37.30 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence N 0°29'17" W, 895.58 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence N 6°10'13" E, 101.10 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence N 52°38'14" E, 70.66 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence N 26°26'27" E, 54.69 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 87°31'28" E, 440.12 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 40°48'57" E, 121.27 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 0°20'01" W, 1060.95 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 49°15'11" W, 108.06 feet to a 5/8-inch diameter rebar with a red plastic cap stamped "PLS 8075"; thence S 87°36'48" W, 558.42 feet to the true point of beginning.

Said parcel containing 17.1 acres, more or less.

Said parcel being subject to a 25-foot wide underground pipeline easement to Salt Lake Pipeline Company, recorded in the Power County Clerk's office as instrument #85575.

### COUNTY RECORDER

Instrument No. 176458 Time 3:50 p.m. Date 1-3-01

Book 2 Page 262 Fee \$5.00

*Jennifer Rupp*  
County Recorder

Record of Survey Plat prepared for Astaris Idaho, LLC; Pond 9E final cap; located in the W1/2 of the NW1/4, Section 13, T 6 S, R 33 E, B.M. Power County.

JOB No. 2000-009	PRINT DATE: JAN 08 2001	DWG. No. 239
DRAWN BY: MLD	DATE: 11/30/00	SHEET 1 OF 1 SHEETS
CHECKED BY: JTE	DATE: 12/15/00	CALCULATED BY: MLD DATE: 10/27/00
PLOT SCALE: 1" = 100'	DATE PLOTTED: 1/03/01	BY: mld

### A & E ENGINEERING INC.

P.O. BOX 1327  
POCATELLO, IDAHO 83204  
PHONE: (208) 233-4226

Reference: Instrument No. 20005743 (Bannock County) and  
Instrument No. 174944 (Power County)

## NOTICE AND COVENANTS RESTRICTING USE OF PROPERTY

FMC Idaho LLC ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Numbers, hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the property.

1. Notice. The property includes an area that has been used to manage hazardous waste regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. This area consists of a former surface impoundment known as Pond 8E where elemental phosphorus processing wastes have been covered by a low permeability cap. The limits of the RCRA cap area are shown on the attached plat. The area within this perimeter, referred to herein as the "Property," is subject to land use restrictions under Subpart G of Title 40 of the Code of Federal Regulations. The Property encompasses the limits of the final cap and an area at least 20 feet outside the anchor trench as shown on the Survey Plat, Instrument Number 20500921, recorded in Book 861 of Deeds at Page — (Bannock County) and Instrument Number 186469, recorded in Book 2 of Deeds at Page 357 (Power County).

2. Type, location and quantity of the hazardous wastes. The hazardous wastes disposed of at the Property consist of elemental phosphorus mineral processing wastes that exhibit hazardous characteristics. These wastes are located beneath the limits of the as-built RCRA cap as shown on the Survey Plat, Instrument Number 20500921, recorded in Book 861 of Deeds at Page — (Bannock County) and Instrument Number 186469, recorded in Book 2 of Deeds at Page 357 (Power County). The total quantity of hazardous waste located at the Property is approximately 27 acre-feet.

3. Covenants Restricting Use. Property use and development inconsistent with the restrictions established under Subpart G of Title 40 of the Code of Federal Regulations shall be prohibited. No activity or development shall take place with respect to the Property that would jeopardize the integrity of the installed cap or interfere with ongoing cap maintenance and monitoring. Any subsurface intrusion at the Property is prohibited.

4. Covenants to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

5. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be

Instrument # **186472**

POWER COUNTY, IDAHO

2005-01-18

02:26:52 No. of Pages: 3

Recorded for : A & E ENGINEERING

CHRISTINE STEINLICH

Fee: 9.00

Ex-Officio Recorder Deputy

*Maryellen Schelotte*

subject to the notice, covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors, transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

6. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless each such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.

7. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

8. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. This instrument does not limit or otherwise affect prior land use restrictions that have been placed on the Property. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated this 18<sup>th</sup> day of January, 2005.

FMC IDAHO LLC

By: Phil J. Hartman

Its: VICE PRESIDENT

STATE OF IDAHO

)

) ss.

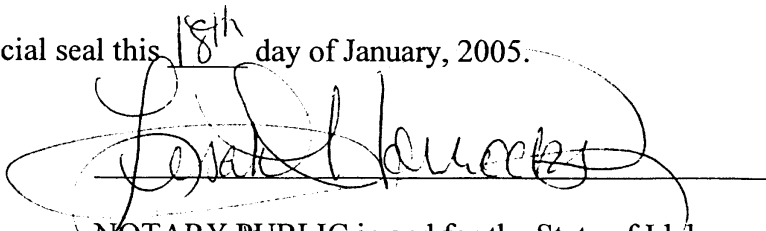
COUNTY OF BANNOCK

)

I certify that I know or have satisfactory evidence that Rob J. Hartman, is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Vice President of FMC Idaho LLC, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 18<sup>th</sup> day of January, 2005.



  
NOTARY PUBLIC in and for the State of Idaho,  
residing at Pocatello  
My appointment expires 7/16/2005



*Margen Schelote*

Reference: Instrument No. 20005743 (Bannock County) and  
Instrument No. 174944 (Power County)

## NOTICE AND COVENANTS RESTRICTING USE OF PROPERTY

FMC Idaho LLC ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Numbers, hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the property.

1. Notice. The property includes an area that has been used to manage hazardous waste regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. This area consists of a former surface impoundment known as the Phase IV Ponds where elemental phosphorus processing wastes have been covered by a low permeability cap. The limits of the RCRA cap area are shown on the attached plat. The area within this perimeter, referred to herein as the "Property," is subject to land use restrictions under Subpart G of Title 40 of the Code of Federal Regulations. The Property encompasses the limits of the final cap and an area at least 20 feet outside the anchor trench as shown on the Survey Plat, Instrument Number 20500921, recorded in Book 861 of Deeds at Page — (Bannock County) and Instrument Number 186469, recorded in Book 2 of Deeds at Page 357 (Power County).

2. Type, location and quantity of the hazardous wastes. The hazardous wastes disposed of at the Property consist of elemental phosphorus mineral processing wastes that exhibit hazardous characteristics. These wastes are located beneath the limits of the as-built RCRA cap as shown on the Survey Plat, Instrument Number 20500921, recorded in Book 861 of Deeds at Page — (Bannock County) and Instrument Number 186469, recorded in Book 2 of Deeds at Page 357 (Power County). The total quantity of hazardous waste located at the Property is approximately 46.3 acre-feet.

3. Covenants Restricting Use. Property use and development inconsistent with the restrictions established under Subpart G of Title 40 of the Code of Federal Regulations shall be prohibited. No activity or development shall take place with respect to the Property that would jeopardize the integrity of the installed cap or interfere with ongoing cap maintenance and monitoring. Any subsurface intrusion at the Property is prohibited.

4. Covenants to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

5. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be subject to the notice, covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors, transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

6. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless each such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.

7. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

8. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. This instrument does not limit or otherwise affect prior land use restrictions that have been placed on the Property. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated this 18<sup>th</sup> day of January, 2005.

FMC IDAHO LLC

By: 

Its: VICE PRESIDENT

STATE OF IDAHO

)

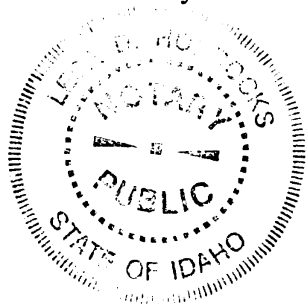
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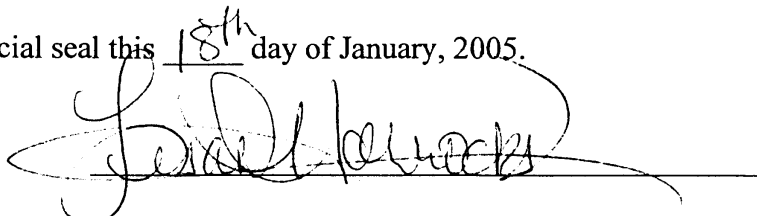
COUNTY OF BANNOCK

)

I certify that I know or have satisfactory evidence that Rob J. Hartman, is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Vice President of FMC Idaho LLC, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 18<sup>th</sup> day of January, 2005.



  
NOTARY PUBLIC in and for the State of Idaho,  
residing at Bozelle  
My appointment expires 9/16/2005

*M. Maureen Schelste*

Reference: Instrument No. 20005743 (Bannock County) and  
Instrument No. 174944 (Power County)

## NOTICE AND COVENANTS RESTRICTING USE OF PROPERTY

FMC Idaho LLC ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Numbers, hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the property.

1. Notice. The property includes an area that has been used to manage hazardous waste regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. This area consists of a former surface impoundment known as Pond 15S where elemental phosphorus processing wastes have been covered by a low permeability cap. The limits of the RCRA cap area are shown on the attached plat. The area within this perimeter, referred to herein as the "Property," is subject to land use restrictions under Subpart G of Title 40 of the Code of Federal Regulations. The Property encompasses the limits of the final cap and an area at least 20 feet outside the anchor trench as shown on the Survey Plat, Instrument Number 20500921, recorded in Book 861 of Deeds at Page — (Bannock County) and Instrument Number 186469, recorded in Book 2 of Deeds at Page 357 (Power County).

2. Type, location and quantity of the hazardous wastes. The hazardous wastes disposed of at the Property consist of elemental phosphorus mineral processing wastes that exhibit hazardous characteristics. These wastes are located beneath the limits of the as-built RCRA cap as shown on the Survey Plat, Instrument Number 20500921, recorded in Book 861 of Deeds at Page — (Bannock County) and Instrument Number 186469, recorded in Book 2 of Deeds at Page 357 (Power County). The total quantity of hazardous waste located at the Property is approximately 140 acre-feet.

3. Covenants Restricting Use. Property use and development inconsistent with the restrictions established under Subpart G of Title 40 of the Code of Federal Regulations shall be prohibited. No activity or development shall take place with respect to the Property that would jeopardize the integrity of the installed cap or interfere with ongoing cap maintenance and monitoring. Any subsurface intrusion at the Property is prohibited.

4. Covenants to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

5. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be



subject to the notice, covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors, transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

6. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless each such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.

7. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

8. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. This instrument does not limit or otherwise affect prior land use restrictions that have been placed on the Property. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated this 18<sup>th</sup> day of January, 2005.

FMC IDAHO LLC

By: Rob J. Hartman

Its: VICE PRESIDENT

STATE OF IDAHO

)

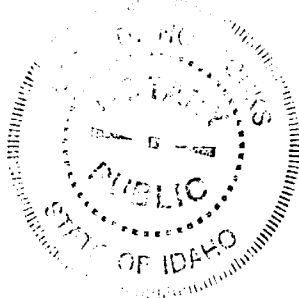
) ss.

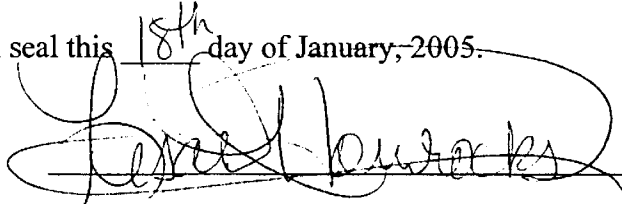
COUNTY OF BANNOCK

)

I certify that I know or have satisfactory evidence that Rob J. Hartman, is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Vice President of FMC Idaho LLC, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 18<sup>th</sup> day of January, 2005.



  
NOTARY PUBLIC in and for the State of Idaho,  
residing at Bozelle  
My appointment expires 9/14/2005

Reference: Instrument No. 20005743 (Bannock County) and  
Instrument No. 174944 (Power County)

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2. Type, location and quantity of the hazardous wastes. The hazardous wastes disposed of at the Property consist of elemental phosphorus mineral processing wastes that exhibit hazardous characteristics. These wastes are located beneath the limits of the as-built RCRA cap as shown on the Survey Plat, Instrument Number 20500921, recorded in Book 861 of Deeds at Page — (Bannock County) and Instrument Number 186469, recorded in Book 2 of Deeds at Page 351 (Power County). The total quantity of hazardous waste located at the Property is approximately 140 acre-feet.

3. Covenants Restricting Use. Property use and development inconsistent with the restrictions established under Subpart G of Title 40 of the Code of Federal Regulations shall be prohibited. No activity or development shall take place with respect to the Property that would jeopardize the integrity of the installed cap or interfere with ongoing cap maintenance and monitoring. Any subsurface intrusion at the Property is prohibited.

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5. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be

1/3

**Instrument # 186473**

POWER COUNTY, IDAHO

2005-01-18

02:27:47 No. of Pages: 3

Recorded for : A & E ENGINEERING

CHRISTINE STEINLICHT

Fee: 9.00

Ex-Officio Recorder Deputy

*M. Scheloske*

subject to the notice, covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors, transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

6. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless each such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.

7. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

8. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. This instrument does not limit or otherwise affect prior land use restrictions that have been placed on the Property. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated this 18<sup>th</sup> day of January, 2005.

FMC IDAHO LLC

By: Rob J. Hartman

Its: VICE PRESIDENT

STATE OF IDAHO

)

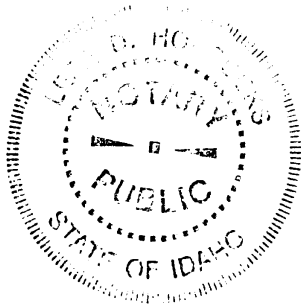
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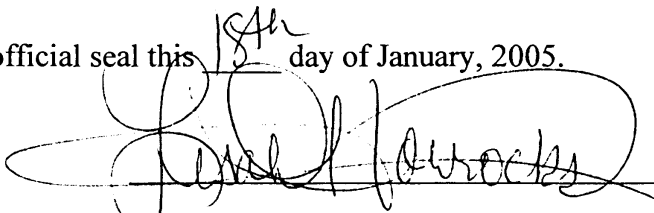
COUNTY OF BANNOCK

)

I certify that I know or have satisfactory evidence that Rob J. Hartman, is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Vice President of FMC Idaho LLC, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 18th day of January, 2005.

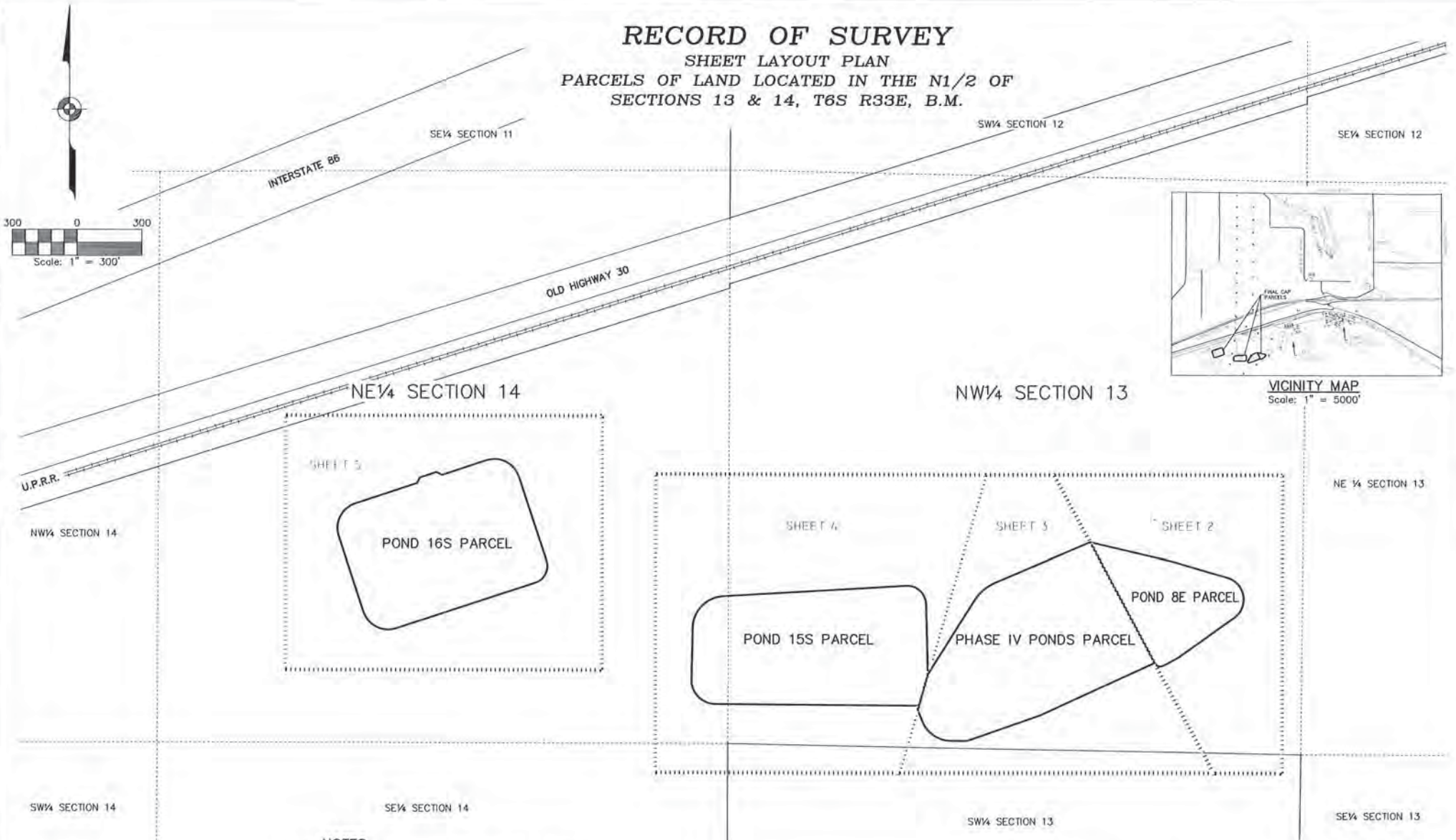


  
NOTARY PUBLIC in and for the State of Idaho,  
residing at Pocatello  
My appointment expires 7/14/2005



# RECORD OF SURVEY

SHEET LAYOUT PLAN  
PARCELS OF LAND LOCATED IN THE N1/2 OF  
SECTIONS 13 & 14, T6S R33E, B.M.



## NOTES

1. Work this drawing with drawing 316, sheets 2, 3, 4 & 5.

## SURVEYOR'S CERTIFICATE

I, Michael L. Deuell, PLS 8075 Idaho, hereby certify that this plat correctly represents a survey made by me, in conformance with law(s), Chapter 19, Title 55, Idaho Code, at the request of FMC Idaho, LLC.



## COUNTY RECORDER

Instrument No. 20500921 Time 11:25 AM Date 11/18/05

Book 814 Page 20500921 Fee \$5.50

*Sandra L. Hillby*  
County Recorder

Record of Survey prepared for FMC Idaho, LLC; Pond Final Caps completed in 2004; located in the N1/2 of Sections 13 and 14, T 6 S, R 33 E, B.M. Power County.

JOB No. 2004-001	PRINT DATE:	DWG. No.
DRAWN BY: MLD	DATE: 12/22/04	SHEET 1 OF 5 SHEETS
CHECKED BY: JTE	DATE: 1/6/05	CALCULATED BY: MLD DATE: 12/22/04
PLOT SCALE: 1" = 100'	DATE PLOTTED: 12/22/04	BY: mld

316

**A & E ENGINEERING INC.**

P.O. BOX 1327  
POCATELLO, IDAHO 83204  
PHONE: (208) 233-4226



# RECORD OF SURVEY

POND 8E FINAL CAP PARCEL, LOCATED IN THE SE 1/4 NW 1/4,  
SECTION 13, T 6 S, R 33 E, B.M., POWER COUNTY



VICINITY MAP  
Scale: 1" = 5000'



N 80°11'32" E (R-CPF)  
N 80°11'32" E  
45.06' (R-CPF)  
45.06'  
NW corner  
Section 13  
Inst. #174631  
(Power County)

## POND 8E PARCEL-LEGAL DESCRIPTION

A parcel of land located in the Southeast 1/4 of the Northwest 1/4 of Section 13, T 6 S, R 33 E, B.M., Power County, Idaho, said parcel being more particularly described as follows:

Commencing at the West 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence S 88°57'33" E along the Latitudinal centerline of said Section 13, 2653.28 feet to the Center 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 51°42'59" W, 724.13 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075", said rebar marking the true point of beginning; thence S 61°45'03" W, 76.87 feet to a point of tangency with a 30.08 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence Northwesterly along a curve to the right, said curve having a central angle of 89°58'25", a radius of 30.08 feet and a chord bearing of N 73°15'45" W, for an arc length of 47.24 feet to a point of tangency, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 28°16'32" W, 633.08 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence S 76°58'28" E, 642.41 feet to a point of tangency with a 113.94 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence Southeasterly and Southwesterly along a curve to the right, said curve having a central angle of 131°21'28", a radius of 113.94 feet and a chord bearing of S 11°17'44" E, for an arc length of 261.22 feet to a point of tangency, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence S 54°23'00" W, 317.64 feet to the true point of beginning.

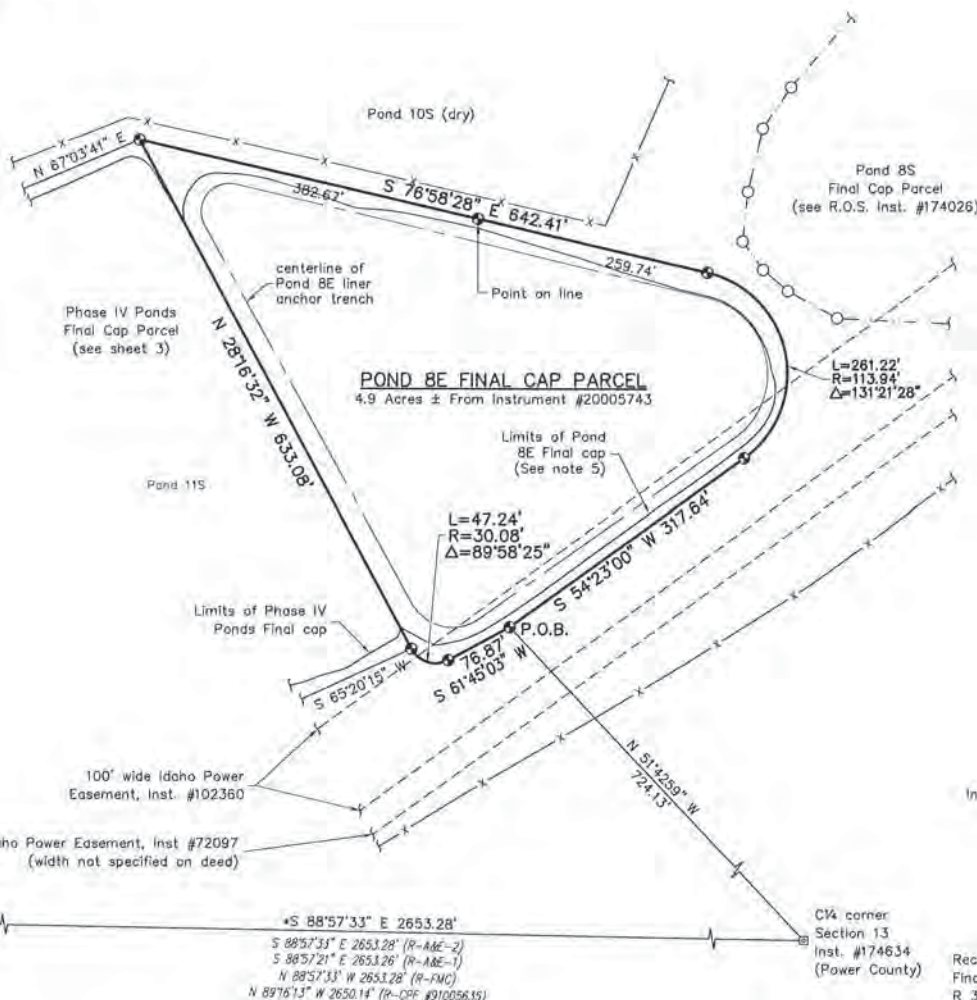
Sold parcel containing 4.9 acres, more or less.

S 00°04'57" W 2653.60'  
S 00°04'57" W 2653.60' (R-A&E-2)

W 1/4 corner  
Section 13  
Inst. #91005635  
(Bannock County)

## LEGEND

- Set 3/8" diameter rebar with an aluminum cap stamped "PLS 8075"
- Found 1/2" diameter rebar with a red plastic cap stamped "PLS 8075"
- Found Indian Allotment Brass cap monument dated 1912
- △ Found Bureau of Indian Affairs aluminum cap reference monument
- △ Calculated point, nothing set (point falls in canal)
- Boundary lines of Pond 8E Final Cap Parcel Easement lines
- X Existing chain link fence lines
- Pond 8S Final Cap
- (R=) Record information from reference documents listed in note 1



## \*BASIS OF BEARINGS

Assumed bearing of S 88°57'33" E between the found Indian Allotment brass cap monuments marking the West 1/4 corner and the Center 1/4 corner of Section 13.

## SURVEYOR'S CERTIFICATE

I, Michael L. Deuell, PLS 8075 Idaho, hereby certify that this plot correctly represents a survey made by me in conformance with law(s) chapter 19, Title 55, Idaho Code at the request of FMC Idaho, LLC.



## NOTES

- REFERENCE DOCUMENTS
  - Deed instrument numbers on file at the Power County Recorder's office: #57272, #60839, #60907, #66252, #72097 & #102360
  - Deed instrument numbers on file at the Bannock County Recorder's office: #20005743.
  - Deed instrument numbers on file in the State of Delaware: #020078912.
  - FMC Corporation drawing #41815 (R-FMC)
  - Record of Survey by A & E Engineering, Inst. #174026 (Power County) (R-A&E-1)
  - Record of Survey by A & E Engineering, Inst. #176458 (Power County) (R-A&E-2)
  - Record of Survey by A & E Engineering, Inst. #174692 (Power County) (R-A&E-2)
  - Record of Survey by A & E Engineering, Inst. #20003575 (Bannock County) (R-A&E-2)
- All bearings and distances are measured unless otherwise noted.
- Mountain States Telephone & Telegraph has a blanket easement in the Northwest 1/4 of section 13. No MST&T communication utilities exist on the property shown on this Record of Survey.
- AT & T of Wyoming has a blanket easement in the Northwest 1/4 of section 13. No AT&T communication utilities exist on the property shown on this Record of Survey.
- The property within the limits of this Survey will be restricted from any post-closure use including, but not limited to, subsurface intrusion which could jeopardize the integrity of the final cap or interfere with ongoing monitoring and maintenance activities.

## COUNTY RECORDER

Instrument No. 20500021 Time 11:25am Date 11/8/05

Book 810 Page — Fee 5

Sandra J. Hill by B. Perkins  
County Recorder

Record of Survey prepared for FMC Idaho, LLC; Pond 8E Final Cap Parcel; located in the SE 1/4 NW 1/4, Section 13, T 6 S, R 33 E, B.M. Power County.

JOB No. 2004-001	PRINT DATE:	DWG. No.
DRAWN BY: MLD	DATE: 11/23/04	SHEET 2 OF 5 SHEETS
CHECKED BY: JTE	DATE: 1/15/05	DATE: 12/20/04
PLAT SCALE: 1" = 100'	DATE PLATTED: 12/22/04	BY: MLD

316

## A & E ENGINEERING INC.

P.O. BOX 1327  
POCATELLO, IDAHO 83204  
PHONE: (208) 233-4226



# RECORD OF SURVEY

PHASE IV PONDS FINAL CAP PARCEL, LOCATED IN THE S 1/2 NW 1/4,  
SECTION 13, T 6 S, R 33 E, B.M., POWER COUNTY



VICINITY MAP  
Scale: 1" = 5000'

## NOTES

- REFERENCE DOCUMENTS
  - Deed instrument numbers on file at the Power County Recorder's office: #57272, #60838, #60907, #66252, #72097 & #102360.
  - Deed instrument numbers on file at the Bannock County Recorder's office: #20005743.
  - Deed instrument numbers on file in the State of Delaware: #020078912.
  - FMC Corporation drawing #41815 (R-FMC)
  - Record of Survey by A & E Engineering, Inst. #174026 (Power County) (R-A&E-1)
  - Record of Survey by A & E Engineering, Inst. #176458 (Power County) (R-A&E-2)
  - Record of Survey by A & E Engineering, Inst. #174692 (Power County) (R-A&E-2)
  - Record of Survey by A & E Engineering, Inst. #20003575 (Bannock County) (R-A&E-2)
- All bearings and distances are measured unless otherwise noted.
- The property within the limits of this Survey will be restricted from any post-closure use including, but not limited to, subsurface intrusion which could jeopardize the integrity of the final cap or interfere with ongoing monitoring and maintenance activities.
- The limits of the final caps of Pond 15S and the Phase IV Ponds overlap at the westerly edge of Pond 14S. Both final caps are encompassed within the boundaries shown on sheets 3 and 4 of this survey.
- AT&T of Wyoming has a blanket easement in the Northwest 1/4 of section 13. No AT&T communication utilities exist on the property shown on this Record of Survey.
- Mountain States telephone & Telegraph has a blanket easement in the Northwest 1/4 of section 13. No MST&T communication utilities exist on the property shown on this Record of Survey.

## COUNTY RECORDER

Instrument No. 2050092 Time 11:25 AM Date 11/18/05

Book 361 Page 1 Fee \$5

Sandra Hill County Recorder

C1/4 corner  
Section 13  
Inst. #174634  
(Power County)

Record of Survey prepared for FMC Idaho, LLC; Phase IV Ponds final cap, located in the S1/2 N1/4, Section 13, T 6 S, R 33 E, B.M. Power County.

JOB No. 2004-001	PRINT DATE:	DWG. No. 316
DRAWN BY: MLD	DATE: 11/23/04	SHEET 3 OF 3 SHEETS
CHECKED BY: JTE	DATE: 1/15/04	CALCULATED BY: MLD DATE: 12/14/04
PLOT SCALE: 1" = 100'	DATE PUBLISHED:	BY:

## A & E ENGINEERING INC.

P.O. BOX 1327  
POCATELLO, IDAHO 83204  
PHONE: (208) 233-4226

## \*BASIS OF BEARINGS

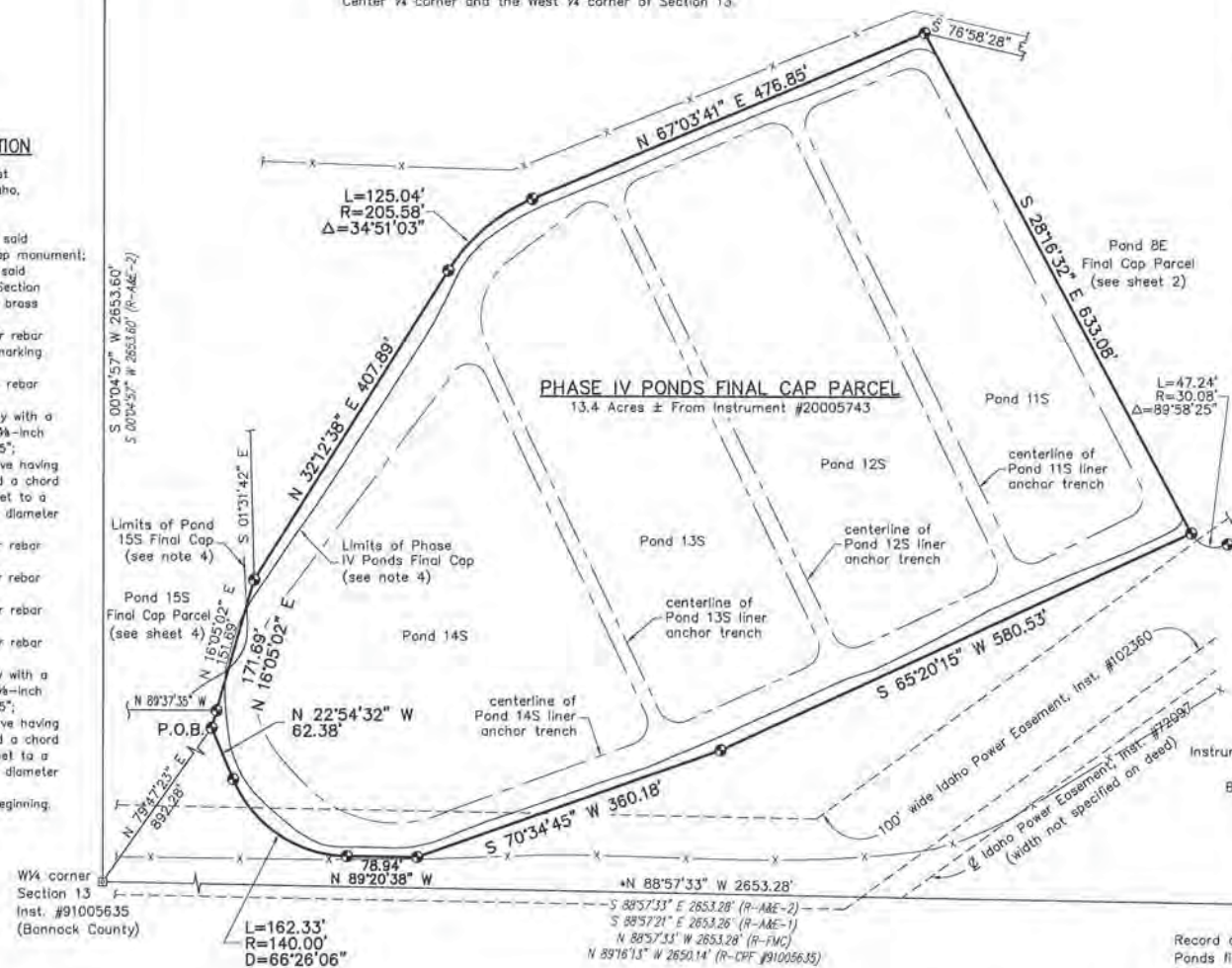
Assumed bearing of N88°57'33"W between the found Indian Allotment brass cap monuments marking the Center 1/4 corner and the West 1/4 corner of Section 13.

## PHASE IV PONDS PARCEL-LEGAL DESCRIPTION

A parcel of land located in the South 1/2 of the Northwest 1/4 of Section 13, T 6 S, R 33 E, B.M., Power County, Idaho, said parcel being more particularly described as follows:

Commencing at the Center 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 88°57'33" W along the Latitudinal centerline of said Section 13, 2653.28 feet to the West 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 79°47'23" E, 892.28 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 16°05'02" E, 171.69 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 32°12'38" E, 407.89 feet to a point of tangency with a 205.58 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence Northeast along a curve to the right, said curve having a central angle of 34°51'03", a radius of 205.58 feet and a chord bearing of N 49°38'09" E, for an arc length of 125.04 feet to a point of tangency, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 67°03'41" E, 476.85 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence S 28°16'32" E, 633.08 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence S 65°20'15" W, 580.53 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence S 70°34'45" W, 360.18 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 89°20'38" W, 78.94 feet to a point of tangency with a 140.00 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence Northwest along a curve to the right, said curve having a central angle of 66°26'06", a radius of 140.00 feet and a chord bearing of N 56°07'35" W, for an arc length of 162.33 feet to a point of tangency, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 22°54'32" W, 62.83 feet to the true point of beginning.

Said parcel containing 13.4 acres, more or less.



## LEGEND

- Set 3/8" diameter rebar with an aluminum cap stamped "PLS 8075"
- Found Indian Allotment Brass cap monument dated 1912
- Found Bureau of Indian Affairs aluminum cap reference monument
- Calculated point, nothing set (point falls in canal)
- Boundary lines of Phase IV Ponds Final Cap Parcel
- Easement lines
- Existing chain link fence lines
- Record information from reference documents listed in note 1

## SURVEYOR'S CERTIFICATE

I, Michael L. Deuell, PLS 8075 Idaho, hereby certify that this plat correctly represents a survey made by me in conformance with law(s) chapter 19, Title 55, Idaho Code at the request of FMC Idaho, LLC.





# RECORD OF SURVEY

POND 15S FINAL CAP PARCEL, LOCATED IN THE SW 1/4 NW 1/4, SECTION 13  
& THE SE 1/4 NE 1/4, SECTION 14, T 6 S, R 33 E, B.M., POWER COUNTY



VICINITY MAP  
Scale: 1" = 5000'

## NOTES

- REFERENCE DOCUMENTS
  - Deed instrument numbers on file at the Power County Recorder's office: #57272, #58154, #60838, #60839, #60907, #66252, #72097, #85496, #85575, #93189 & #102360.
  - Deed instrument numbers on file at the Bannock County Recorder's office: #20005743.
  - Deed instrument numbers on file in the State of Delaware: #020078912 (R-FVC)
  - FMC Corporation drawing #41815 (R-A&E-1)
  - Record of Survey by A & E Engineering, Inst. #174026 (Power County) (R-A&E-2)
  - Record of Survey by A & E Engineering, Inst. #176458 (Power County) (R-A&E-2)
  - Record of Survey by A & E Engineering, Inst. #174692 (Power County) (R-A&E-2)
  - Record of Survey by A & E Engineering, Inst. #20003575 (Bannock County)
- All bearings and distances are measured unless otherwise noted.
- Mountain States Telephone & Telegraph has a blanket easement in the Northeast 1/4 of section 14 and the Northwest 1/4 of section 13. No MST&T communication utilities exist on the property shown on this Record of Survey.
- The limits of the final caps of Pond 15S and the Phase IV Ponds overlap at the westerly edge of Pond 14S. Both final caps are encompassed within the boundaries shown on sheets 3 and 4 of this survey.
- AT & T of Wyoming has a blanket easement in the Southeast 1/4 of the Northeast 1/4 of section 14 and the Northwest 1/4 of section 13. No AT&T communication utilities exist on the property shown on this Record of Survey.
- The property within the limits of this Survey will be restricted from any post-closure use including, but not limited to, subsurface intrusion which could jeopardize the integrity of the final cap or interfere with ongoing monitoring and maintenance activities.

## COUNTY RECORDER

Instrument No. 20500921 Time 11:25am Date 1/18/05

Book 861 Page 1 Fee \$

Sandra J. Hill by B. Perkins  
County Recorder

Record of Survey prepared for FMC Idaho, LLC; Pond 15S Final Cap; located in the SW 1/4 NW 1/4, Section 13 and the SE 1/4 NE 1/4, Section 14, T 6 S, R 33 E, B.M. Power County.

JOB No.	2004-001	PRINT DATE:	DWG. No.
DRAWN BY: MLD	DATE: 11/23/04	SHEET 4 OF 5 SHEETS	316
CHECKED BY: JTE	DATE: 1/19/05	CALCULATED BY: MLD	DATE: 11/23/04
PLOT SCALE: 1" = 100'	DATE PLOTTED: 11/23/04	BY: mld	

A & E ENGINEERING INC.

P.O. BOX 1327  
POCATELLO, IDAHO 83204  
PHONE: (208) 233-4226

## POND 15S PARCEL-LEGAL DESCRIPTION

A parcel of land located in the Southwest 1/4 of the Northwest 1/4 of Section 13 and the Southeast 1/4 of the Northeast 1/4 of Section 14, T 6 S, R 33 E, B.M., Power County, Idaho, said parcel being more particularly described as follows:

Commencing at the Center 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 88°57'33" W along the Latitudinal centerline of said Section 13, 2653.28 feet to the West 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 18°05'51" W, 193.09 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; said rebar marking the true point of beginning; thence Northwest along a curve to the right, said curve having a central angle of 90°49'05", a radius of 110.00 feet and a chord bearing of N 44°13'02" W, for an arc length of 174.36 feet to a point of tangency, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 01°11'30" E, 240.54 feet to a point of tangency with a 150.00 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence Northeast along a curve to the right, said curve having a central angle of 85°22'42", a radius of 150.00 feet and a chord bearing of N 43°52'51" E, for an arc length of 223.52 feet to a point of tangency, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 86°34'12" E 846.50 feet to a point of tangency with a 90.00 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence Southeast along a curve to the right, said curve having a central angle of 91°54'06", a radius of 90.00 feet and a chord bearing of S 47°28'46" E, for an arc length of 144.36 feet to a point of tangency, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence S 01°31'42" E, 323.10 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence S 16°05'02" W, 151.69 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 89°37'35" W, 943.69 feet to a point of tangency with a 110 foot radius curve, said point being the true point of beginning.

Said parcel containing 12.9 acres, more or less.

## LEGEND

- Set 3/8" diameter rebar with an aluminum cap stamped "PLS 8075"
- Found Indian Allotment Brass cap monument dated 1912
- ▲ Found Bureau of Indian Affairs aluminum cap reference monument
- Found 3/8" diameter rebar with a red plastic cap stamped "PLS 8075"
- Found P-K nail with an aluminum washer stamped "PLS 8075"
- △ Calculated point, nothing set (point falls in canal)
- Boundary lines of Pond 15S Final Cap Parcel
- - - Easement lines
- X - - - Existing chain link fence lines
- - - Pond 9E Final Cap
- (R- ) Record information from reference documents listed in note 1

## \*BASIS OF BEARINGS

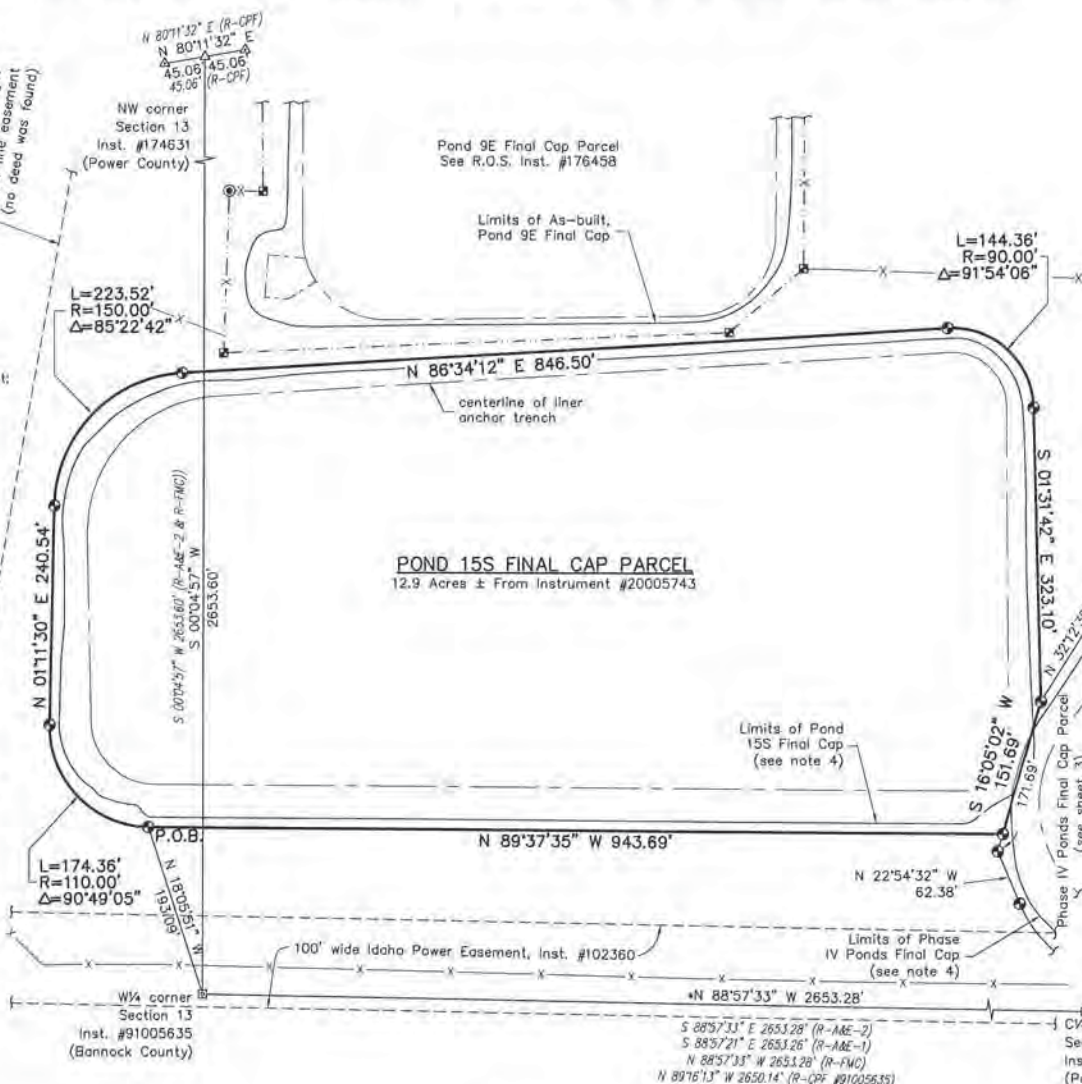
Assumed bearing of N88°57'33"W between the found Indian Allotment brass cap monuments marking the Center 1/4 corner and the West 1/4 corner of Section 13.

## SURVEYOR'S CERTIFICATE

I, Michael L. Deuell, PLS 8075 Idaho, hereby certify that this plot correctly represents a survey made by me in conformance with law(s) chapter 19, Title 55, Idaho Code at the request of FMC Idaho, LLC.

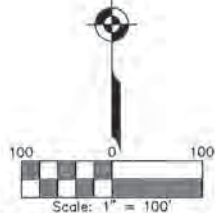


## POND 15S FINAL CAP PARCEL 12.9 Acres ± From Instrument #20005743





# **RECORD OF SURVEY** **POND 16S FINAL CAP PARCEL, LOCATED IN THE S 1/2** **NE 1/4, SECTION 14, T 6 S, R 33 E, B.M., POWER COUNTY**



## **POND 16S PARCEL-LEGAL DESCRIPTION**

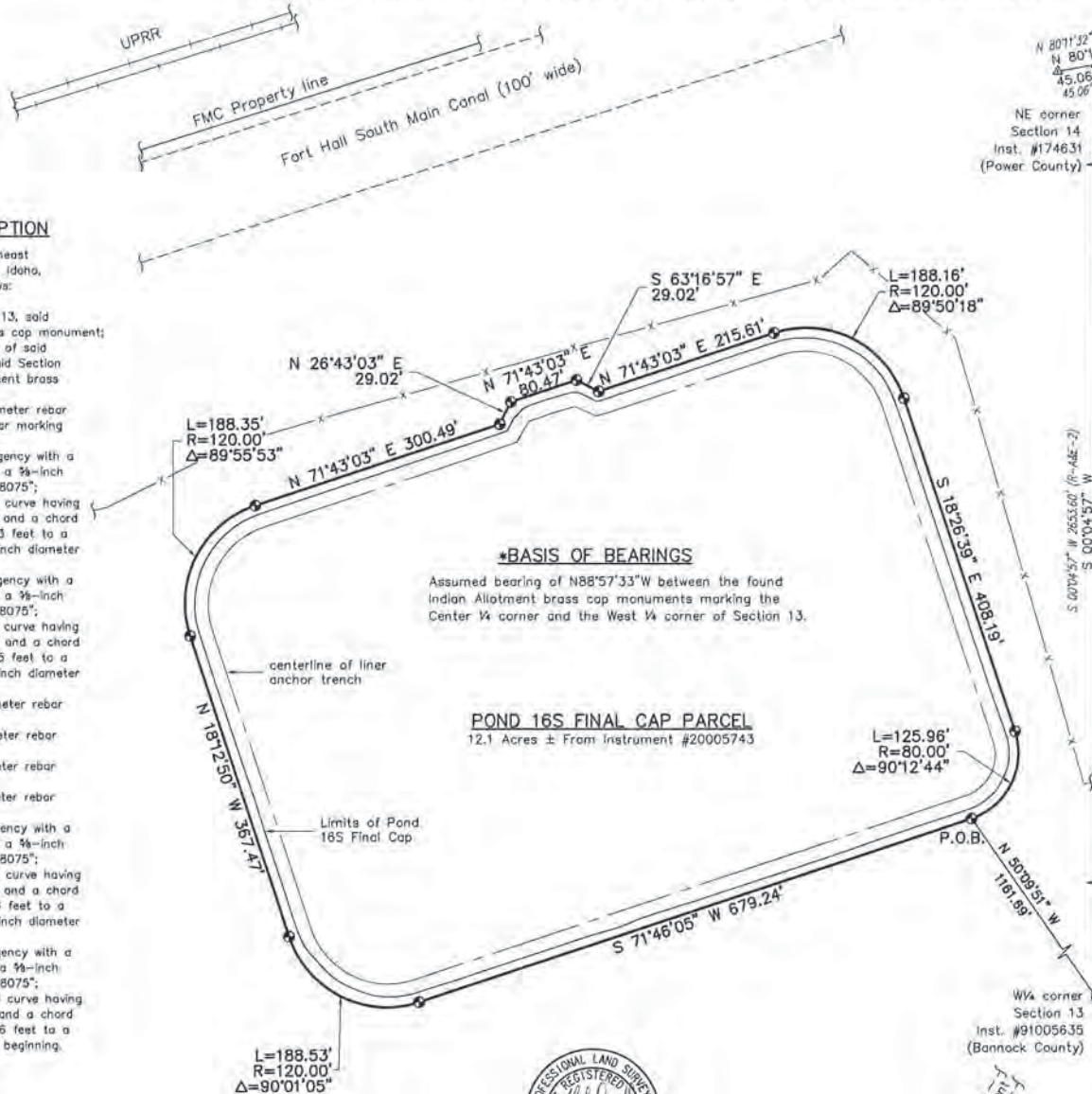
A parcel of land located in the South 1/2 of the Northeast 1/4 of Section 14, T 6 S, R 33 E, B.M., Power County, Idaho, said parcel being more particularly described as follows:

Commencing at the Center 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 88°57'33" W along the Latitudinal centerline of said Section 13, 2653.28 feet to the West 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 50°09'51" W, 1161.69 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075", said rebar marking the true point of beginning; thence S 71°46'05" W, 679.24 feet to a point of tangency with a 120.00 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence Northwesterly along a curve to the right, said curve having a central angle of 90°01'05", a radius of 120.00 feet and a chord bearing of N 63°13'22" W, for an arc length of 188.53 feet to a point of tangency, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 18°12'50" W, 367.47 feet to a point of tangency with a 120.00 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence Northeasterly along a curve to the right, said curve having a central angle of 89°55'53", a radius of 120.00 feet and a chord bearing of N 26°45'06" E, for an arc length of 188.35 feet to a point of tangency, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 71°43'03" E, 300.49 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 26°43'03" E, 29.02 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 71°43'03" E, 80.47 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence S 63°16'57" E, 29.02 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 71°43'03" E, 215.61 feet to a point of tangency with a 120.00 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence Southeasterly along a curve to the right, said curve having a central angle of 89°50'18", a radius of 120.00 feet and a chord bearing of S 63°21'48" E, for an arc length of 188.16 feet to a point of tangency, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence S 18°26'39" E, 408.19 feet to a point of tangency with a 80.00 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence Southwesterly along a curve to the right, said curve having a central angle of 90°12'44", a radius of 80.00 feet and a chord bearing of S 26°39'43" W, for an arc length of 125.96 feet to a point of tangency, said point being the true point of beginning.

Said parcel containing 12.1 acres, more or less.

## **LEGEND**

- Set 3/8" diameter rebar with an aluminum cap stamped "PLS 8075"
- Found Indian Allotment Brass cap monument dated 1912
- ▲ Found Bureau of Indian Affairs aluminum cap reference monument
- △ Calculated point, nothing set (point falls in canal)
- Boundary lines of Pond 16S Final Cap Parcel
- - - Easement lines
- X Existing chain link fence lines
- (R- ) Record information from reference documents listed in note 1



**POND 16S FINAL CAP PARCEL**  
 12.1 Acres ± From Instrument #20005743



## **SURVEYOR'S CERTIFICATE**

I, Michael L. Deuell, PLS 8075 Idaho, hereby certify that this plat correctly represents a survey made by me in conformance with law(s) chapter 19, Title 55, Idaho Code at the request of FMC Idaho, LLC.



**VICINITY MAP**  
 Scale: 1" = 5000'

## **NOTES**

- REFERENCE DOCUMENTS
  - Deed instrument numbers on file at the Power County Recorder's office: #58154, #60839, #85496 & #93189
  - Deed instrument numbers on file at the Bannock County Recorder's office: #20005743
  - Deed instrument numbers on file in the state of Delaware: #020078912
  - FMC Corporation drawing #41815 (R-FMC)
  - Record of Survey by A & E Engineering, Inst. #174026 (Power County) (R-A&E-1)
  - Record of Survey by A & E Engineering, Inst. #176458 (Power County) (R-A&E-2)
  - Record of Survey by A & E Engineering, Inst. #174692 (Power County) (R-A&E-2)
  - Record of Survey by A & E Engineering, Inst. #20003575 (Bannock County) (R-A&E-2)
- All bearings and distances are measured unless otherwise noted.
- Mountain States Telephone & Telegraph has a blanket easement in the Northeast 1/4 of section 14. No MST & T communication utilities exist on the property shown on this Record of Survey.
- AT & T of Wyoming has a blanket easement in the Southeast 1/4 of the Northeast 1/4 of section 14. No AT & T communication utilities exist on the property shown on this Record of Survey.
- The property within the limits of this Survey will be restricted from any post-closure use including, but not limited to, subsurface intrusion which could jeopardize the integrity of the final cap or interfere with ongoing monitoring and maintenance activities.

## **COUNTY RECORDER**

Instrument No. 2000921 Time 11:25am Date 1/18/05  
 Book 861 Page — Fee 5-  
*Sandra L. Hill* by *B. Perkins*  
 County Recorder C/A corner  
 Section 13  
 Inst. #174634  
 (Power County)  
 S 88°57'33" E 2653.28' (R-A&E-2)  
 S 88°57'21" E 2653.28' (R-A&E-1)  
 N 88°57'33" W 2653.28' (R-FMC)  
 N 89°16'13" W 2650.14' (R-CPE #91005635)  
 N 88°57'33" W 2653.28'

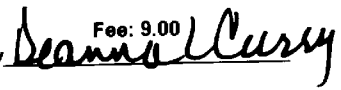
Record of Survey prepared for FMC Idaho, LLC; Pond 16S final cap; located in the S1/2 of the NE1/4, Section 14, T 6 S, R 33 E, B.M. Power County.

JOB No.	2004-001	PRINT DATE:	DWG. No.
DRAWN BY:	MJD	DATE: 11/21/04	SHEET 3 OF 5 SHEETS
CHECKED BY:	JTE	DATE: 1/15/05	CASMAN BY MJD DATE 11/21/04
PLOT SCALE:	1" = 100'	DATE PLOTTED: 11/23/04	BY: mjd

## **A & E ENGINEERING INC.**

P.O. BOX 1327  
 POCATELLO, IDAHO 83204  
 PHONE: (208) 233-4226





**Reference: Instrument No. 20005743 (Bannock County) and  
Instrument No. 174944 (Power County)**

## **NOTICE AND COVENANTS RESTRICTING USE OF PROPERTY**

FMC Idaho LLC ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Numbers, hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the property.

1. Notice. The property includes an area that has been used to manage hazardous waste regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. This area consists of a former surface impoundment known as Pond 18 Cell A where elemental phosphorus processing wastes have been covered by a low permeability cap. The limits of the RCRA cap area are shown on the attached plat. The area within this perimeter, referred to herein as the "Property," is subject to land use restrictions under Subpart G of Title 40 of the Code of Federal Regulations. The Property encompasses the limits of the final cap and an area at least 20 feet outside the anchor trench as shown on the Survey Plat, Instrument Number 188391, recorded in Book 2 of Deeds at Page 377-B (Power County).

2. Type, location and quantity of the hazardous wastes. The hazardous wastes disposed of at the Property consist of elemental phosphorus mineral processing wastes that exhibit hazardous characteristics. These wastes are located beneath the limits of the as-built RCRA cap as shown on the Survey Plat, Instrument Number 188391, recorded in Book 2 of Deeds at Page 377-B (Power County). The total quantity of hazardous waste located at the Property is approximately 25 acre-feet.

3. Covenants Restricting Use. Property use and development inconsistent with the restrictions established under Subpart G of Title 40 of the Code of Federal Regulations shall be prohibited. No activity or development shall take place with respect to the Property that would jeopardize the integrity of the installed cap or interfere with ongoing cap maintenance and monitoring. Any subsurface intrusion at the Property is prohibited.

4. Covenants to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

5. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be subject to the notice, covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors,

transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

6. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless each such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.

7. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

8. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. This instrument does not limit or otherwise affect prior land use restrictions that have been placed on the Property. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated this 19<sup>th</sup> day of December, 2005.

FMC IDAHO LLC

By: Rob J. Hartne

Its: Vice President

STATE OF IDAHO

)

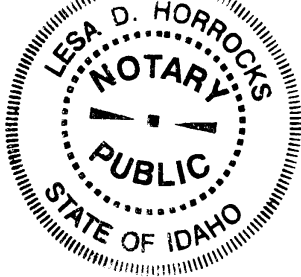
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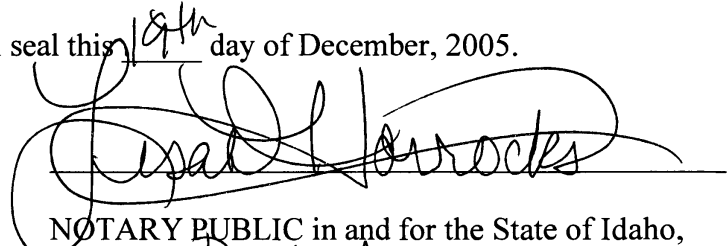
COUNTY OF BANNOCK

)

I certify that I know or have satisfactory evidence that Rob J. Hartman, is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Vice President of FMC Idaho LLC, and that the instrument was the free and voluntary act of said corporation.

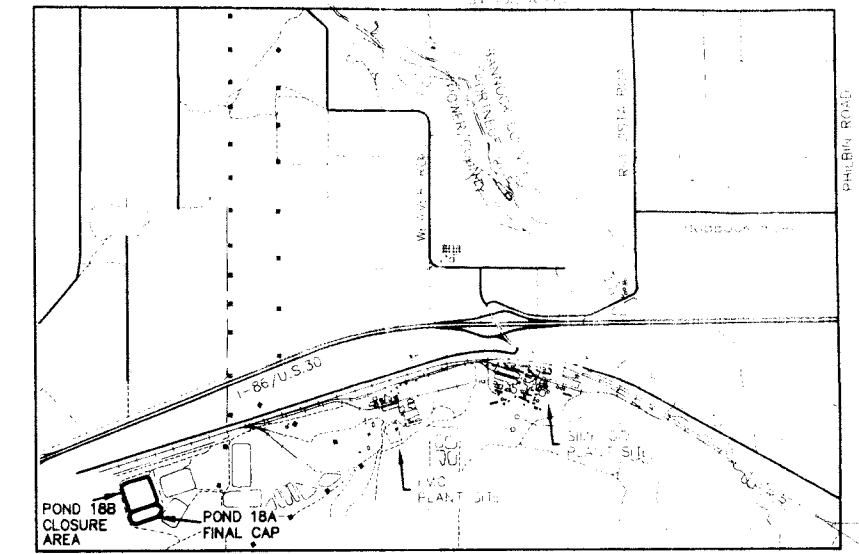
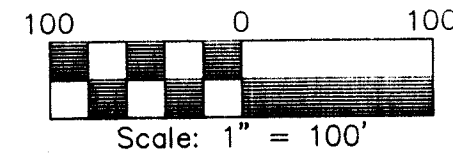
Given under my hand and official seal this 18th day of December, 2005.



  
NOTARY PUBLIC in and for the State of Idaho,  
residing at Pocatello  
My appointment expires 9/16/2011

# RECORD OF SURVEY

POND 18 CELL A FINAL CAP PARCEL & POND 18 CELL B CLOSURE BY REMOVAL AREA,  
LOCATED IN THE SE 1/4 NW 1/4 AND THE E 1/2 OF  
SECTION 14, T 6 S, R 33 E, B.M., POWER COUNTY



VICINITY MAP  
Scale: 1" = 5000'

NE corner  
Section 14  
Inst. #174631  
(Power County)

## POND 18 CELL A PARCEL-LEGAL DESCRIPTION

A parcel of land located in the East 1/2 of Section 14, T 6 S, R 33 E, B.M., Power County, Idaho, said parcel being more particularly described as follows:

Commencing at the Center 1/4 corner of Section 13, T 6 S, R 33 E, said corner being marked by a 1912 Indian Allotment brass cap monument;  
thence N 88°57'33" W along the Latitudinal centerline of said Section 13, 2653.28 feet to the West 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument;  
thence N 88°32'51" W, 1853.07 feet to a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075", said rebar marking the true point of beginning;  
thence S 71°12'37" W, 535.87 feet to a point of tangency with a 140.00 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075";  
thence Southwesterly and Northwesterly along a curve to the right, said curve having a central angle of 89°27'16", a radius of 140.00 feet and a chord bearing of N 64°03'45" W, for an arc length of 218.58 feet to a point of tangency, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075";  
thence N 19°20'07" W, 51.36 feet to a point of tangency with a 140.00 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075";  
thence Northwesterly and Northeasterly along a curve to the right, said curve having a central angle of 90°50'41", a radius of 140.00 feet and a chord bearing of N 26°05'13" E, for an arc length of 221.98 feet to a point of tangency, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075";  
thence N 71°30'34" E, 532.74 feet to a point of tangency with a 140.00 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075";  
thence Northeasterly and Southeasterly along a curve to the right, said curve having a central angle of 37°14'08", a radius of 140.00 feet and a chord bearing of S 89°52'22" E, for an arc length of 90.98 feet to a point of tangency, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075";  
thence S 71°15'18" E, 64.12 feet to a point of tangency with a 115.00 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075";  
thence Southeasterly and Southwesterly along a curve to the right, said curve having a central angle of 96°03'54", a radius of 115.00 feet and a chord bearing of S 23°13'21" E, for an arc length of 192.82 feet to a point of tangency, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075";  
thence S 24°48'36" W, 64.31 feet to a point of tangency with a 140.00 foot radius curve, said point being marked by a 3/8-inch diameter rebar with an aluminum cap stamped "PLS 8075";  
thence Southwesterly along a curve to the right, said curve having a central angle of 46°24'01", a radius of 140.00 feet and a chord bearing of S 48°00'37" E, for an arc length of 113.38 feet to the true point of beginning.

Said parcel containing 5.8 acres, more or less.

## NOTES

See drawing 348, sheet 1 of 2 for Notes.

## COUNTY RECORDER

### Instrument # 188391

POWER COUNTY, IDAHO  
2005-12-19 02:47:48 No. of Pages: 2  
Recorded for: A & E ENGINEERING INC  
CHRISTINE STEINLICH Fee: 10.00  
Ex-Officio Recorder Deputy: *Manuel Scholte*

Instrument No. \_\_\_\_\_ Time \_\_\_\_\_ Date \_\_\_\_\_

Book 2 Page 377-8 Fee \_\_\_\_\_

County Recorder

Record of Survey prepared for FMC Idaho, LLC; Pond 18 Cell A final cap parcel & Pond 18 Cell B Closure by Removal area; in the SE 1/4 NW 1/4 & the E 1/2 of Section 14, T 6 S, R 33 E, B.M., Power County

JOB No.	2001-005 & 2002-010	PRINT DATE:	DWG. No.
DRAWN BY:	MLD	DATE: 11/21/05	SHEET 2 OF 2 SHEETS
CHECKED BY:	JTE	DATE: 12/13/05	BY: MLD DATE: 11/21/05
PLOT SCALE:	1 = 100	DATE PLOTTED:	11/22/05 BY: mld

348

## A & E ENGINEERING INC.

P.O. BOX 1327  
POCATELLO, IDAHO 83204  
PHONE: (208) 233-4226

## LEGEND

- Boundary lines of Pond 18A Final Cap Parcel
- Existing Idaho Power Easement lines
- Existing chain link fence lines
- Record information from reference documents listed in note 1
- Set 3/8" diameter rebar with an aluminum cap stamped "PLS 8075"
- Found 3/8" diameter rebar with an aluminum cap stamped "PLS 8075"
- Found Indian Allotment Brass cap monument dated 1912
- Found Bureau of Indian Affairs aluminum cap reference monument
- Calculated point, nothing set (point falls in canal)

## POND 18 CELL B CLOSURE BY REMOVAL

12.7 Acres ±

Centerline Pond 18  
Cell B Embankment

centerline of liner  
anchor trench

## POND 18 CELL A FINAL CAP PARCEL

5.8 Acres ± From Instrument #20005743  
& Instrument #020078912 (Delaware)

Limits of Pond  
18 Cell A Final Cap

P.O.B., Pond  
18 Cell A Parcel

Limits of Pond 17  
Final Cap Parcel  
Boundary  
(See Sheet 1 of 2)

W 1/4 corner  
Section 13  
Inst. #91005635  
(Bannock County)

C 1/4 corner  
Section 13  
Inst. #174634  
(Power County)

## CURVE TABLE

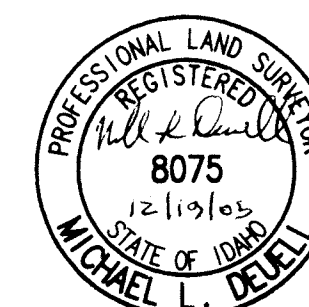
NUMBER	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING
C5	218.58'	140.00'	89°27'16"	N 64°03'45" W
C6	221.98'	140.00'	90°50'41"	N 26°05'13" E
C7	90.98'	140.00'	37°14'08"	S 89°52'22" E
C8	192.82'	115.00'	96°03'54"	S 23°13'21" E
C9	113.38'	140.00'	46°24'01"	S 48°00'37" W

## \*BASIS OF BEARINGS

Assumed bearing of N88°57'33"W between the found Indian Allotment brass cap monuments marking the Center 1/4 corner and the West 1/4 corner of Section 13.

## SURVEYOR'S CERTIFICATE

I, Michael L. Duell, PLS 8075 Idaho, Hereby certify that this plat correctly represents a survey made by me in conformance with law(s) chapter 19, Title 55, Idaho Code at the request of FMC Idaho, LLC.





**Instrument # 188396**

POWER COUNTY, IDAHO

2005-12-19

03:12:24 No. of Pages: 3

Recorded for : JOHN ELLE

CHRISTINE STEINLICHT

Ex-Officio Recorder Deputy

Fee: 9.00

Reference: Instrument No. 20005743 (Bannock County) and  
Instrument No. 174944 (Power County)

## **NOTICE AND COVENANTS RESTRICTING USE OF PROPERTY**

FMC Idaho LLC ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Numbers, hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the property.

1. Notice. The property includes an area that has been used to manage hazardous waste regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. This area consists of a former surface impoundment known as Pond 17 where elemental phosphorus processing wastes have been covered by a low permeability cap. The limits of the RCRA cap area are shown on the attached plat. The area within this perimeter, referred to herein as the "Property," is subject to land use restrictions under Subpart G of Title 40 of the Code of Federal Regulations. The Property encompasses the limits of the final cap and an area at least 20 feet outside the anchor trench as shown on the Survey Plat, Instrument Number 188391, recorded in Book 2 of Deeds at Page 377-A (Power County).

2. Type, location and quantity of the hazardous wastes. The hazardous wastes disposed of at the Property consist of elemental phosphorus mineral processing wastes that exhibit hazardous characteristics. These wastes are located beneath the limits of the as-built RCRA cap as shown on the Survey Plat, Instrument Number 188391, recorded in Book 2 of Deeds at Page 377-A (Power County). The total quantity of hazardous waste located at the Property is approximately 59 acre-feet.

3. Covenants Restricting Use. Property use and development inconsistent with the restrictions established under Subpart G of Title 40 of the Code of Federal Regulations shall be prohibited. No activity or development shall take place with respect to the Property that would jeopardize the integrity of the installed cap or interfere with ongoing cap maintenance and monitoring. Any subsurface intrusion at the Property is prohibited.

4. Covenants to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

5. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be subject to the notice, covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors,

transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

6. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless each such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.

7. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

8. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. This instrument does not limit or otherwise affect prior land use restrictions that have been placed on the Property. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated this 19<sup>th</sup> day of December, 2005.

FMC IDAHO LLC

By: Rob J. Hartman

Its: Vice President

STATE OF IDAHO

)

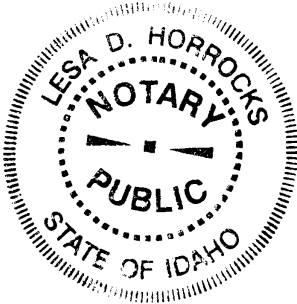
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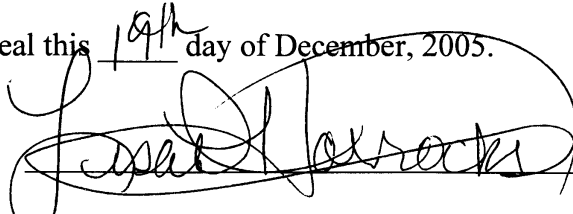
COUNTY OF BANNOCK

)

I certify that I know or have satisfactory evidence that Rob J. Hartman, is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Vice President of FMC Idaho LLC, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 19th day of December, 2005.



  
NOTARY PUBLIC in and for the State of Idaho,  
residing at Bozelle  
My appointment expires 9/16/2011

*Deanna L. Curry*

**Reference: Instrument No. 20005743 (Bannock County) and  
Instrument No. 174944 (Power County)**

## **NOTICE AND COVENANTS RESTRICTING USE OF PROPERTY**

FMC Idaho LLC ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Numbers, hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the property.

1. Notice. The property includes an area that has been used to manage hazardous waste regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. This area consists of a former surface impoundment known as the Slag Pit Sump where elemental phosphorus processing wastes have been covered by a low permeability cap. The limits of the RCRA cap area are shown on the attached plat. The area within this perimeter, referred to herein as the "Property," is subject to land use restrictions under Subpart G of Title 40 of the Code of Federal Regulations. The Property encompasses the limits of the final cap and an area at least 20 feet outside the anchor trench as shown on the Survey Plat, Instrument Number 188392, recorded in Book 2 of Deeds at Page 378 (Power County).

2. Type, location and quantity of the hazardous wastes. The hazardous wastes disposed of at the Property consist of elemental phosphorus mineral processing wastes that exhibit hazardous characteristics. These wastes are located beneath the limits of the as-built RCRA cap as shown on the Survey Plat, Instrument Number 188392, recorded in Book 2 of Deeds at Page 378 (Power County). The total quantity of hazardous waste located at the Property is approximately 28 cubic yards.

3. Covenants Restricting Use. Property use and development inconsistent with the restrictions established under Subpart G of Title 40 of the Code of Federal Regulations shall be prohibited. No activity or development shall take place with respect to the Property that would jeopardize the integrity of the installed cap or interfere with ongoing cap maintenance and monitoring. Any subsurface intrusion at the Property is prohibited.

4. Covenants to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

5. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be subject to the notice, covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors,

transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

6. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless each such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.

7. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

8. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. This instrument does not limit or otherwise affect prior land use restrictions that have been placed on the Property. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated this 19<sup>th</sup> day of December, 2005.

FMC IDAHO LLC

By: Rob J. Hartman

Its: Vice President



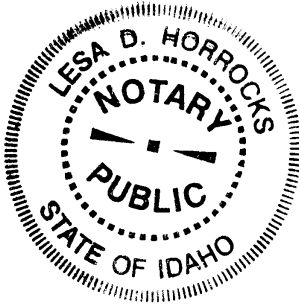
STATE OF IDAHO

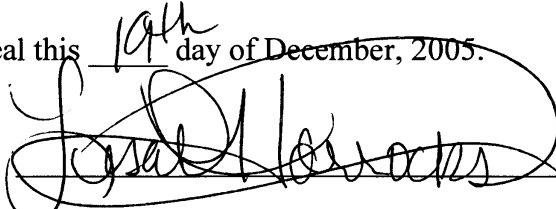
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COUNTY OF BANNOCK

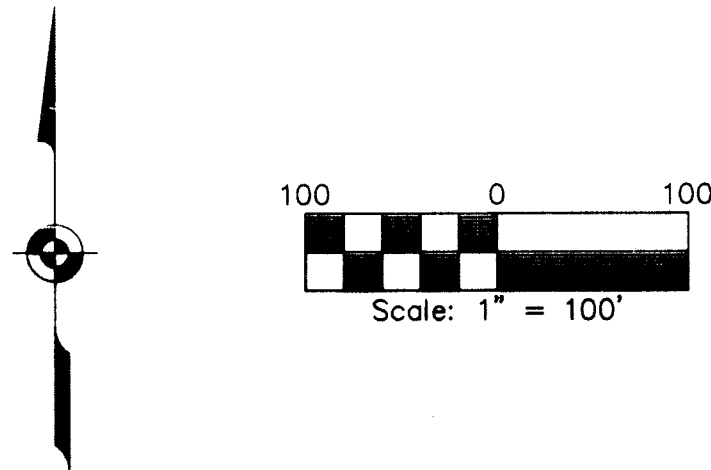
I certify that I know or have satisfactory evidence that Rob J. Hartman, is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Vice President of FMC Idaho LLC, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 19th day of December, 2005.



  
NOTARY PUBLIC in and for the State of Idaho,  
residing at Pocatello  
My appointment expires 9/16/2011

# **RECORD OF SURVEY** **PONDS 17 FINAL CAP PARCEL, LOCATED IN THE E 1/2 OF** **SECTION 14, T 6 S, R 33 E, B.M., POWER COUNTY**



## **LEGEND**

- Set 5/8" diameter rebar with an aluminum cap stamped "PLS 8075"
- Found 5/8" diameter rebar with an aluminum cap stamped "PLS 8075"
- ⊠ Found Indian Allotment Brass cap monument dated 1912
- ▲ Found Bureau of Indian Affairs aluminum cap reference monument
- △ Calculated point, nothing set (point falls in canal)
- Boundary lines of Pond 17 Final Cap Parcel
- - - Existing easement lines
- - - Existing chain link fence lines
- (R- ) Record information from reference documents listed in note 1

## **POND 17 PARCEL—LEGAL DESCRIPTION**

A parcel of land located in the East 1/2 of Section 14, T 6 S, R 33 E, B.M., Power County, Idaho, said parcel being more particularly described as follows:

Commencing at the Center 1/4 corner of Section 13, T 6 S, R 33 E, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 88°57'33" W along the Latitudinal centerline of said Section 13, 2653.28 feet to the West 1/4 corner of said Section 13, said corner being marked by a 1912 Indian Allotment brass cap monument; thence N 79°45'14" W, 1104.85 feet to a 5/8-inch diameter rebar with an aluminum cap stamped "PLS 8075", said rebar marking the true point of beginning; thence S 33°03'08" W, 471.02 feet to a point of tangency with a 118.91 foot radius curve, said point being marked by a 5/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence Southwesterly and Northwesterly along a curve to the right, said curve having a central angle of 90°00'00", a radius of 118.91 feet and a chord bearing of S 78°03'08" W, for an arc length of 186.78 feet to a point of tangency, said point being marked by a 5/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 56°56'52" W, 241.02 feet to a point of tangency with a 118.91 foot radius curve, said point being marked by a 5/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence Northwesterly and Northeasterly along a curve to the right, said curve having a central angle of 90°00'00", a radius of 118.91 feet and a chord bearing of N 11°56'52" W, for an arc length of 186.78 feet to a point of tangency, said point being marked by a 5/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence N 33°03'08" E, 471.02 feet to a point of tangency with a 118.91 foot radius curve, said point being marked by a 5/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence Northeasterly and Southeasterly along a curve to the right, said curve having a central angle of 90°00'00", a radius of 118.91 feet and a chord bearing of N 78°03'08" E, for an arc length of 186.78 feet to a point of tangency, said point being marked by a 5/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence S 56°56'52" E, 241.02 feet to a point of tangency with a 118.91 foot radius curve, said point being marked by a 5/8-inch diameter rebar with an aluminum cap stamped "PLS 8075"; thence Southeasterly and Southwesterly along a curve to the right, said curve having a central angle of 90°00'00", a radius of 118.91 feet and a chord bearing of S 11°56'52" E, for an arc length of 186.78 feet to the true point of beginning.

Said parcel containing 7.5 acres, more or less.

Existing Idaho Power Co.  
underground powerline  
easement Inst. #188037  
(Power County)

Limits of Pond 18 Cell A  
Final Cap Parcel Boundary  
(See Sheet 2 of 2)

Pond 16S  
Final Cap Parcel  
(see R.O.S. Inst. #186469, Power Co.  
or Inst. #20500921, Bannock Co.)

**POND 17 FINAL CAP PARCEL**  
 7.5 Acres ± From Instrument #20005743  
 & Instrument #020078912 (Delaware)

## **CURVE TABLE**

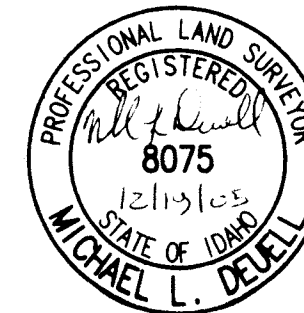
NUMBER	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING
C1	186.78'	118.91'	90°00'00"	S 78°03'08" W
C2	186.78'	118.91'	90°00'00"	N 11°56'52" W
C3	186.78'	118.91'	90°00'00"	N 78°03'08" E
C4	186.78'	118.91'	90°00'00"	S 11°56'52" E

## **\*BASIS OF BEARINGS**

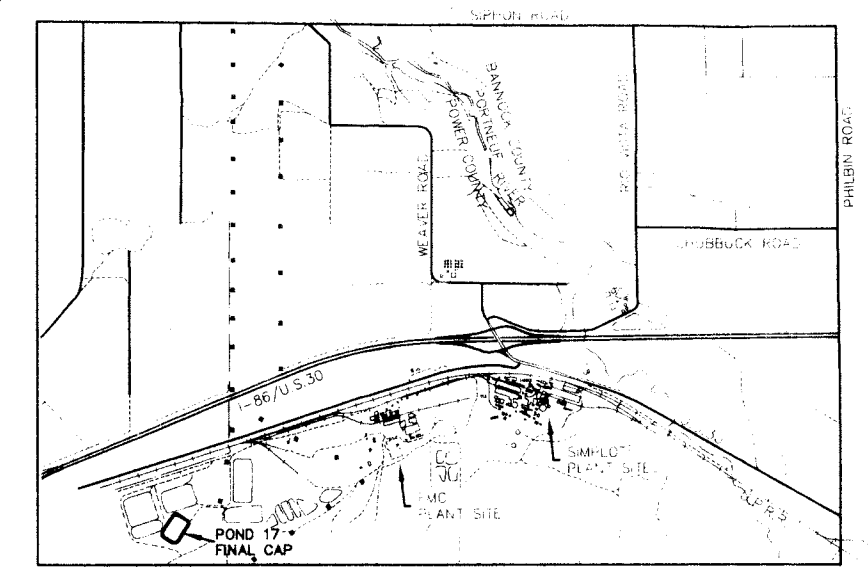
Assumed bearing of N88°57'33"W between the found Indian Allotment brass cap monuments marking the Center 1/4 corner and the West 1/4 corner of Section 13.

## **SURVEYOR'S CERTIFICATE**

I, Michael L. Deuell, PLS 8075 Idaho, Hereby certify that this plat correctly represents a survey made by me in conformance with law(s) chapter 19, Title 55, Idaho Code at the request of FMC Idaho, LLC.



**Instrument # 188391**  
 POWER COUNTY, IDAHO  
 2005-12-19 02:47:48 No. of Pages: 2  
 Recorded for: A & E ENGINEERING INC  
 CHRISTINE STEINLICH Fee: 10.00  
 Ex-Officio Recorder Deputy *Christine Steinlich*



**VICINITY MAP**  
 Scale: 1" = 5000'

## **NOTES**

- REFERENCE DOCUMENTS
  - Deed Instrument numbers on file at the Power County Recorder's office: #58153, #58154, #58942, #60839, #85496, #93189, #95234, #174944 & #188037
  - Deed Instrument numbers on file at the Bannock County Recorder's office: #20005743
  - Deed Instrument numbers on file in the state of Delaware: #020078912
  - FMC Corporation drawing #41815, Rev. 4 (R-FMC)
  - Record of Survey by A & E Engineering, Inst. #174026 (Power County) (R-A&E-1)
  - Records of Survey by A & E Engineering, Inst. #174692, #176548, #180842 & #186469 (Power County) (R-A&E-2)
  - Record of Survey by A & E Engineering, Inst. #20003575 & #20221582 (Bannock County) (R-A&E-2)
- All bearings and distances are measured unless otherwise noted.
- Mountain States Telephone & Telegraph has a blanket easement in the Northeast 1/4 of section 14. No MST & T communication utilities exist on the property shown on this Record of Survey.
- AT & T of Wyoming has a blanket easement in the Southeast 1/4 of the Northeast 1/4 of section 14. No AT & T communication utilities exist on the property shown on this Record of Survey.
- The property within the limits of Pond 17 and Pond 18 Cell A, as shown on this Survey, will be restricted from any post-closure use including, but not limited to, subsurface intrusion which could jeopardize the integrity of the final cap or interfere with ongoing monitoring and maintenance activities.

S 88°57'33" E 2653.28' (R-A&E-2)  
 S 88°57'21" E 2653.26' (R-A&E-1)  
 N 88°57'33" W 2653.28' (R-FMC)  
 N 89°16'13" W 2650.14' (R-CPF #91005635)  
 \*N 88°57'33" W 2653.28'  
 C1/4 corner  
 Section 13  
 Inst. #174634  
 (Power County)

## **COUNTY RECORDER**

Instrument No. \_\_\_\_\_ Time \_\_\_\_\_ Date \_\_\_\_\_

Book 2 Page 377-A Fee \_\_\_\_\_

County Recorder

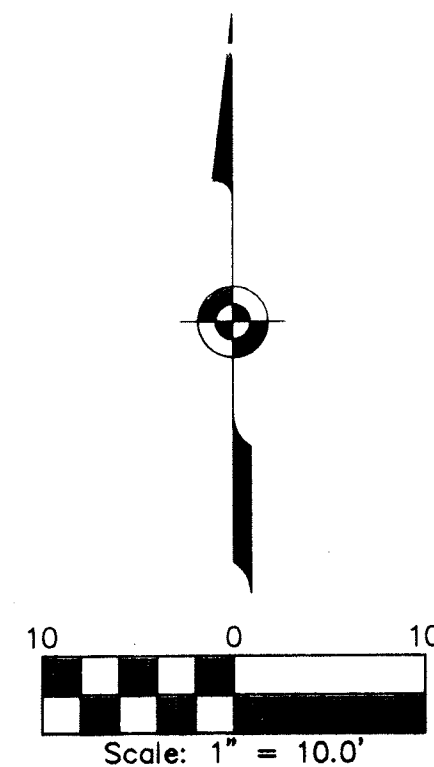
Record of Survey prepared for FMC Idaho, LLC; Pond 17 final cap; in the E1/2 of Section 14, T 6 S, R 33 E, B.M., Power County

JOB No.	2001-005 & 2002-010	PRINT DATE:	DWG. No.
DRAWN BY:	MLD	DATE: 11/21/05	SHEET 1 OF 2 SHEETS
CHECKED BY:	JTE	DATE: 12/13/05	CALCULATED BY: MLD DATE: 11/21/05
PLOT SCALE:	1" = 100'	DATE PLOTTED:	11/22/05 BY: mld

## **A & E ENGINEERING INC.**

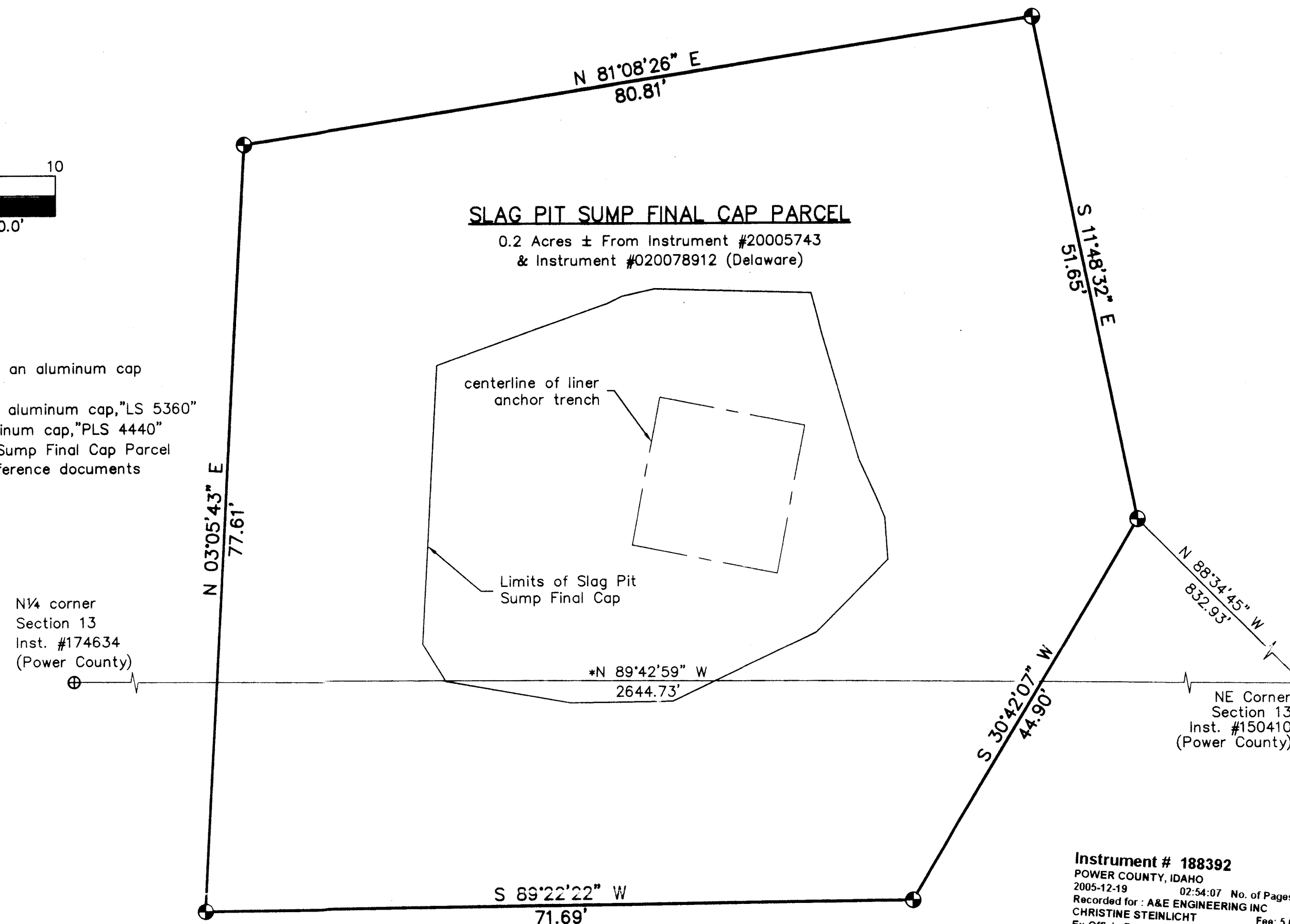
P.O. BOX 1327  
 POCATELLO, IDAHO 83204  
 PHONE: (208) 233-4226

**RECORD OF SURVEY**  
**SLAG PIT SUMP FINAL CAP PARCEL, LOCATED IN THE**  
**SE 1/4 SE 1/4, SECTION 12 AND THE NE 1/4 NE 1/4, SECTION 13,**  
**T 6 S, R 33 E, B.M., POWER COUNTY**



**LEGEND**

- Set 5/8" diameter rebar with an aluminum cap stamped "PLS 8075"
- Found 3"Ø Harper & Leavitt aluminum cap, "LS 5360"
- ⊕ Found 7/8"Ø rebar with aluminum cap, "PLS 4440"
- Boundary lines of Slag Pit Sump Final Cap Parcel
- (R- ) Record information from reference documents listed in note 1



**SLAG PIT SUMP FINAL CAP PARCEL**

0.2 Acres ± From Instrument #20005743  
& Instrument #020078912 (Delaware)

NW 1/4 corner  
Section 13  
Inst. #174634  
(Power County)

NE Corner  
Section 13  
Inst. #150410  
(Power County)

Instrument # 188392  
POWER COUNTY, IDAHO  
2005-12-19 02:54:07 No. of Pages: 1  
Recorded for: A & E ENGINEERING INC.  
CHRISTINE STEINLICHT Fee: 5.00  
Ex-Officio Recorder Deputy

**SLAG PIT SUMP FINAL CAP PARCEL-LEGAL DESCRIPTION**

A parcel of land located in the Southeast 1/4 Southeast 1/4 of Section 12 and in the Northeast 1/4 Northeast 1/4 of Section 13, all in T 6 S, R 33 E, B.M., Power County, Idaho, said parcel being more particularly described as follows:

Commencing at the Northeast corner of said Section 13, said corner being marked by an aluminum cap monument stamped "LS 5360";  
thence N 88°34'45" W, 832.93 feet to a set 5/8-inch diameter rebar with an aluminum cap stamped "PLS 8075";  
thence S 30°42'07" W, 44.90 feet to a set 5/8-inch diameter rebar with an aluminum cap stamped "PLS 8075";  
thence S 89°22'22" W, 71.69 feet to a set 5/8-inch diameter rebar with an aluminum cap stamped "PLS 8075";  
thence N 03°05'43" E, 77.61 feet to a set 5/8-inch diameter rebar with an aluminum cap stamped "PLS 8075";  
thence N 81°08'26" E, 80.81 feet to a set 5/8-inch diameter rebar with an aluminum cap stamped "PLS 8075";  
thence S 11°48'32" E, 51.65 feet to the true point of beginning.

Said parcel containing 0.2 acres, more or less.

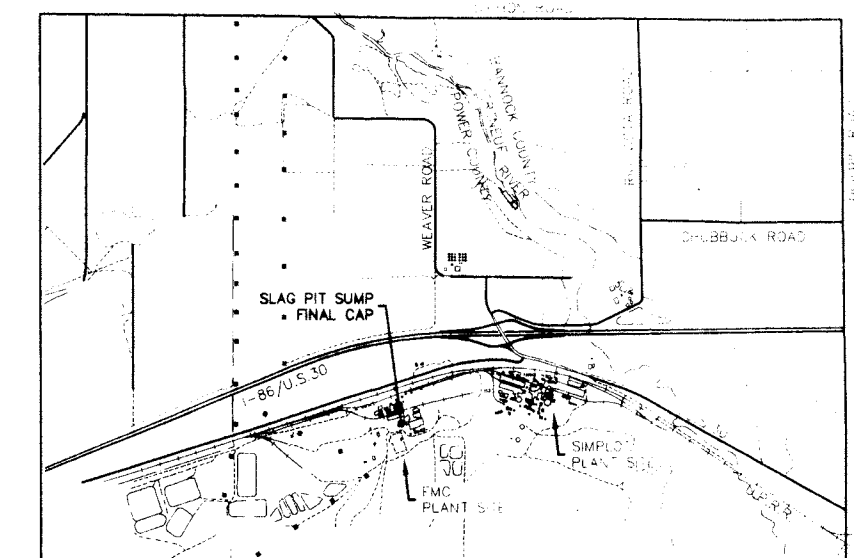
**\*BASIS OF BEARINGS**

Assumed bearing of N 89°42'59" W between the found monuments marking the Northeast corner and the North 1/4 corner of Section 13, as shown on this survey.



**SURVEYOR'S CERTIFICATE**

I, Michael L. Deuell, PLS 8075 Idaho, Hereby certify that this plat correctly represents a survey made by me in conformance with law(s) chapter 19, Title 55, Idaho Code at the request of FMC Idaho, LLC.



**VICINITY MAP**  
Scale: 1" = 5000'

**NOTES**

1. REFERENCE DOCUMENTS
  - Deed Instrument numbers on file at the Power County Recorder's office: #57210, #60839, #66253 & #174944
  - Deed Instrument numbers on file at the Bannock County Recorder's office: #20005743
  - Deed Instrument numbers on file in the state of Delaware: #020078912
  - FMC Corporation drawing #41815, Rev. 4
  - Records of Survey by A & E Engineering, Inst. #174692 & #180842 (Power County)
  - Records of Survey by A & E Engineering, Inst. #20003575 & #20221582 (Bannock County)
2. All bearings and distances are measured unless otherwise noted.
3. Mountain States Telephone & Telegraph has a blanket easement in the South 1/2 Southeast 1/4 of section 12. No MST & T communication utilities exist on the property shown on this Record of Survey.
4. AT & T of Wyoming has a blanket easement in the Northeast 1/4 of section 13. No AT & T communication utilities exist on the property shown on this Record of Survey.
5. The property within the limits of this Survey will be restricted from any post-closure use including, but not limited to, subsurface intrusion which could jeopardize the integrity of the final cap or interfere with ongoing monitoring and maintenance activities.

**COUNTY RECORDER**

Instrument No. \_\_\_\_\_ Time \_\_\_\_\_ Date \_\_\_\_\_

Book 2 Page 378 Fee \_\_\_\_\_

County Recorder

Record of Survey prepared for FMC Idaho, LLC; Slag Pit Sump final cap parcel; in the SE 1/4 SE 1/4 of Section 12 and the NE 1/4 NE 1/4 of Section 13, T 6 S, R 33 E, B.M., Power County

JOB No. 2005-043		PRINT DATE:	DWG. No.
DRAWN BY: MLD	DATE: 11/21/05	SHEET 1 OF 1 SHEETS	349
CHECKED BY: JTE	DATE: 12/9/05	CALCULATED BY: MLD DATE: 11/21/05	
PLOT SCALE: 1" = 10'		DATE PLOTTED: 11/22/05 BY: mld	

**A & E ENGINEERING INC.**

P.O. BOX 1327  
POCATELLO, IDAHO 83204  
PHONE: (208) 233-4226

Instrument # 188548

POWER COUNTY, IDAHO

2006-01-17

01:51:05 No. of Pages: 3

Recorded for : JOHN ELLE

CHRISTINE STEINLICHT

Ex-Officio Recorder Deputy

Fee: 9.00

Jennifer Rupp

Reference: Instrument No. 20005743 (Bannock County) and  
Instrument No. 174944 (Power County)

### NOTICE AND COVENANTS RESTRICTING USE OF PROPERTY

FMC Idaho LLC ("Covenantor"), being the owner of the real property located in Power County, Idaho described in the above-referenced Instrument Numbers, hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the property.

1. Notice. The property includes an area whereupon a remedial action has been completed pursuant to an Idaho Department of Environmental Quality (IDEQ) approved Remedial Action Plan. This area consists of former surface impoundments known as the calciner ponds where phosphate shale beneficiating wastes have been covered by a low permeability cap. The limits of the calciner ponds cap area are shown on the attached plat. The area within this perimeter, referred to herein as the "Property," is subject to land use restrictions. The Property encompasses the limits of the final cap and an area at least 20 feet outside the anchor trench as shown on the Survey Plat, Instrument Number 188393, recorded in Book 2 of Deeds at Page 379 (Power County).

2. Type, location and quantity of wastes. The wastes disposed of at the Property consist of phosphate shale beneficiating wastes. These wastes are located beneath the limits of the as-built cap as shown on the Survey Plat, Instrument Number 188393, recorded in Book 2 of Deeds at Page 379 (Power County). The total quantity of waste located at the Property is approximately 55.8 acre-feet.

3. Covenants Restricting Use. Property use and development inconsistent with the restrictions established herein shall be prohibited. No activity or development shall take place with respect to the Property that would jeopardize the integrity of the installed cap or interfere with ongoing cap maintenance and monitoring. Any subsurface intrusion at the Property is prohibited.

4. Covenants to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

5. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be subject to the notice, covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors,

transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

6. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless each such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations.

7. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

8. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. This instrument does not limit or otherwise affect prior land use restrictions that have been placed on the Property. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated this 17<sup>th</sup> day of January, 2006.

FMC IDAHO LLC

By: Rob J. Hartman

Its: Vice President



STATE OF IDAHO

)

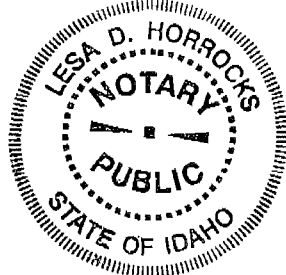
) ss.

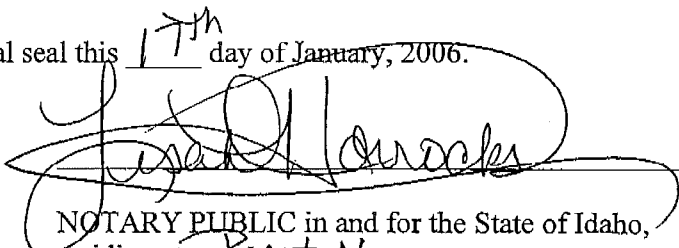
COUNTY OF BANNOCK

)

I certify that I know or have satisfactory evidence that Rob J. Hartman, is the person who appeared before me, that said person acknowledged that (s)he signed this instrument, and that said person on oath stated that (s)he was authorized to execute the instrument as the Vice President of FMC Idaho LLC, and that the instrument was the free and voluntary act of said corporation.

Given under my hand and official seal this 17<sup>th</sup> day of January, 2006.



  
NOTARY PUBLIC in and for the State of Idaho,  
residing at Pocatello  
My appointment expires 9/16/2011

Recording Requested By and  
When Recorded Return to:

**Instrument # 198944**

POWER COUNTY, IDAHO

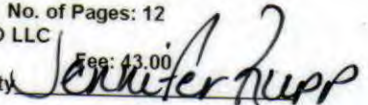
9-20-2010 11:31:01 No. of Pages: 12

Recorded for : FMC IDAHO LLC

CHRISTINE STEINLICHT

Ex-Officio Recorder Deputy

Fee: 43.00



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SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

**THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT IMPOSING  
ACTIVITY AND USE LIMITATIONS PURSUANT TO THE UNIFORM  
ENVIRONMENTAL COVENANTS ACT, IDAHO CODE § 55-3001, et seq.**

**ENVIRONMENTAL COVENANT**

FMC Idaho LLC ("FMC") as the owner of the Property described below grants this Environmental Covenant pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. FMC grants this Environmental Covenant to itself and its assigns as "holders" as defined at Idaho Code § 55-3002(6). This Environmental Covenant sets forth protective provisions, covenants, restrictions and conditions (collectively referred to as "Activity and Use Limitations") on the Property described below. The Activity and Use Limitations are designed to protect natural resources, human health and the environment. The U.S. Environmental Protection Agency ("EPA") and the Idaho Department of Environmental Quality (the "Department") are signing this Environmental Covenant as "agencies" as that term is defined in Idaho Code § 55-3002(2). The rights granted to EPA and the Department under UECA and this Environmental Covenant are not interests in real property and they are not "holders" under this Environmental Covenant.

Property. This Environmental Covenant concerns FMC-owned property located north of Highway 30 in Power County, Idaho that is within the FMC Plant Operable Unit of the Eastern Michaud Flats ("EMF") Superfund Site, a National Priorities List site under the federal Comprehensive Environmental Response, Compensation and Liability Act. The Property consists of Parcel 3 of the property conveyed to FMC under Instrument Number 174944 as recorded in the Power County recorder's office, also designated as Supplemental Remedial Investigation Addendum ("SRIA") Parcels 4, 5 and 6, and is legally described in the attached Schedule A (hereinafter referred to as the "Property"). The general location of the Property is shown on the map attached as Schedule B.

Property Ownership. FMC hereby represents and warrants to the other signatories to this Environmental Covenant that it is the sole owner of the Property, holds fee simple



title to the Property, and has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. FMC never conducted elemental phosphorus processing, phosphate ore handling or process waste management at the Property. However, its location directly north of other FMC property at which FMC carried out these operations prior to shutdown in 2001 and near the J.R. Simplot Company ("Simplot") phosphorus ore processing plant that remains in operation has caused soil and ground water contamination at the Property as detailed in the administrative record referenced below. EPA issued a Record of Decision ("ROD") in June 1998 that selected remedial action for the EMF Superfund Site including the Property, but EPA is reviewing that ROD with respect to the FMC Plant Operable Unit including what remedial action, if any, may be required at the Property. The Activity and Use Restrictions set forth herein are not inconsistent with the remedial action that EPA selected in the June 1998 ROD. EPA has concluded that it is appropriate to issue a Ready for Reuse Determination for the Property notwithstanding the current remedial action re-evaluation, based on the environmental characterization that FMC has conducted at the Property, the levels of soil and groundwater contaminants that have been found, the activity and use restrictions placed by this Environmental Covenant, and other factors. This Environmental Covenant supports the EPA Ready for Reuse Determination.

Name and Location of Administrative Record. A copy of the administrative record for the EMF Superfund Site, which encompasses the Property, can be found at the Idaho State University Library, 921 South 8th Avenue, Pocatello, Idaho 83209.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, FMC and any successors in interest (i.e., future owners of the Property or any portion thereof) are hereby restricted from using the Property, now or at any time in the future, as specifically set forth below:

1. The Property, and any portion thereof, shall not be used for any residential purposes, child care, hospitals, schools, churches or other religious premises, or residential use associated with commercial premises such as managers' housing at hotels or motels.
2. There shall be no extraction of ground water under the Property for human consumption that exceeds the Maximum Contaminant Levels prescribed by the federal Safe Drinking Water Act.
3. The Property shall not be used for growing fruits and vegetables for human consumption.

FMC or its successors in interest shall be solely responsible for demonstrating that use on the Property is in conformity with the Activity and Use Limitations. If any event or action occurs that constitutes or may constitute a breach of the activity and use



limitations, FMC or any successors in interest shall notify EPA and the Department within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by FMC or any successors in interest, EPA and the Department.

Amendment by Consent. This Environmental Covenant may be amended by consent pursuant to Idaho Code § 55-3010. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of the Environmental Covenant to a new holder is an amendment.

Duration and Termination. The Activity and Use Limitations shall apply to the Property, or any subdivided portion thereof, in perpetuity unless FMC or its successors in interest apply to EPA and the Department to have this Environmental Covenant terminated pursuant to Idaho Code § 55-3010 and demonstrate that contaminated soils and ground water are at levels the EPA and the Department deem in writing to be adequate for the Property, or any subdivided portion thereof, to be developed for unrestricted use.

Provisions to Run With the Land. Each and all of the Activity and Use Limitations shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Activity and Use Limitations are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property.

Concurrence of Subsequent Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property to be in accord with the foregoing and to agree for and among themselves, and their successors, that the Activity and Use Limitations as herein established must be adhered to and that their interest in the Property shall be subject to the Activity and Use Limitations contained herein.

Recording/ Filing of Environmental Covenant. This Environmental Covenant and any amendment or termination of the Environmental Covenant shall be recorded in the Power County recorder's office. This Environmental Covenant shall be recorded by FMC or its successors in interest within fifteen (15) days of receipt of this Environmental Covenant signed by all parties. Any amendment or termination shall be recorded by the owner at that time within fifteen (15) days of receipt of such amendment or termination signed by all parties. Within thirty (30) days of the recording of this Environmental Covenant or any amendment or termination, FMC, its successors in interest or the owner at the time of amendment or termination shall provide to EPA and the Department a copy of this recorded Environmental Covenant or any amendment or termination of this Environmental Covenant. Upon receipt of the copy of the recorded Environmental Covenant, and any amendment or termination, the Department shall post the copy of the fully executed instrument in the Registry as required by Idaho Code Section 55-3012(1). In addition, a copy of the recorded Environmental Covenant, or any amendment or termination, shall be provided by the owner at that time to the



following persons: (a) each person that signed the Environmental Covenant; (b) each person holding a recorded interest in the Property; (c) each person in possession of the Property; (d) Power County; and (e) any other person as EPA or the Department may require. The validity of the Environmental Covenant is not affected by failure to provide a copy of the Environmental Covenant as required under this section.

Compliance Reporting. FMC, and/or any successors in interest, shall submit annually to the Department and EPA written documentation verifying that the activity and use limitations remain in place and compliance with the activity and use limitations.

Enforcement. EPA, the Department and any party to the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against the owner at the time of a violation of this Environmental Covenant and any other person then using the Property. Failure to comply with any of the Activity and Use Limitations set forth herein shall be grounds for EPA, the Department, or their successors, to require the owner at that time to correct or remove any violations of this Environmental Covenant. Violation of this Environmental Covenant shall be grounds for EPA, the Department or their successors to file civil actions against the owner at that time as provided by law or in equity including, without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

Non-Waiver. No failure on the part of EPA, the Department or any holder at any time to require performance of any term of this Environmental Covenant shall be taken or held to be a waiver of such term or in any way affect the rights of EPA, the Department or any holder to enforce such term.

Property Access. EPA and the Department shall have a right of access to the Property at reasonable times for the purposes of evaluating compliance with this Environmental Covenant.

Notice of Conveyance of Property. Within thirty (30) days after the closing of any conveyance of the Property, or part thereof, the conveyer of the Property shall provide written notice to EPA, the Department and Power County regarding the name and address of all the then owners and/or occupants of the Property, or part thereof, conveyed. EPA and the Department shall not, by reason of this Environmental Covenant, have authority to approve, disapprove, or otherwise affect any conveyance of the Property except as otherwise provided by law.

Notices. All notices required or permitted to be given hereunder shall be in writing and mailed in the United States Mail, postage prepaid, by certified or registered mail, return receipt requested, to the appropriate address indicated below or at such other place or places as FMC or its successors, EPA or its successors, or the Department or its successors, may, from time to time, respectively, designate in a written notice given to the other parties. Notices that are deposited in the United States Mail in accordance with the terms of this provision shall be deemed received three (3) days after the date of mailing thereof.



FMC IDAHO LLC:

FMC Corporation  
ATTN: Barbara Ritchie  
Associate Director, Environmental  
1735 Market Street  
Philadelphia, Pennsylvania 19103

EPA:

U.S. Environmental Protection Agency  
ATTN: Kira Lynch  
EMF Superfund Project Manager  
Office of Environmental Cleanup (ECL-113)  
1200 Sixth Avenue  
Seattle, Washington 98101

THE DEPARTMENT:

Idaho Department of Environmental Quality  
ATTN: State Response Program Manager  
1410 N. Hilton  
Boise, Idaho 83706

Partial Invalidity. If any portion of the Environmental Covenant or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such invalidated portion had not been included herein.

Headings. Headings at the beginning of each section of this Environmental Covenant are solely for the convenience of the parties and are not a part of the Environmental Covenant.

Idaho Code References. All references to the Idaho Code sections include successor provisions.

Reservation of Rights. Notwithstanding any provision of this Environmental Covenant, EPA and the Department retain all of their access and enforcement authorities under any applicable statute or rule. Nothing in this Environmental Covenant shall affect the ability of EPA or the Department to enforce the terms of any consent decree or other agreement or order relating to remediation of the Property entered into between EPA and/or the Department, on the one hand, and FMC and/or other parties. Nothing in this Environmental Covenant shall affect the obligations of FMC or other parties under any consent decree or other agreement or order. Acceptance by EPA and the Department hereunder is based upon the information presently known or available to EPA and the Department with respect to the environmental condition of the Property, and EPA and the Department reserve the right to take appropriate action under applicable authorities in the event EPA or the Department determines that new information warrants such action.

Effective Date. The effective date of this instrument shall be the date the fully executed Environmental Covenant is recorded at the Power County recorder's office.

**Signature and Acknowledgments**

**Accepted:**

**Idaho Department of Environmental Quality**

Signature: \_\_\_\_\_

Printed Name: Toni Hardesty

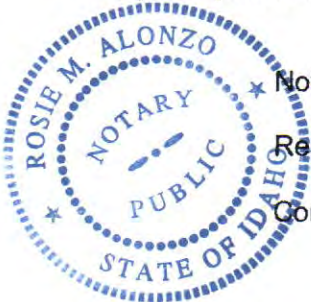
Title: Director, Idaho Department of Environmental Quality

Date: \_\_\_\_\_

State of Idaho                    )  
  ) ss.  
County of Ada                    )

On this 2 day of September, in the year 2010, before me, a Notary Public in and for said County and State, personally appeared Toni Hardesty, known or identified to me to be the Director of the Idaho Department of Environmental Quality that executed this Environmental Covenant, and acknowledged to me that the Idaho Department of Environmental Quality executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for Idaho: \_\_\_\_\_

Residing at: \_\_\_\_\_

Commission Expires: \_\_\_\_\_


4/12



**Signature and Acknowledgments**

**Accepted:**

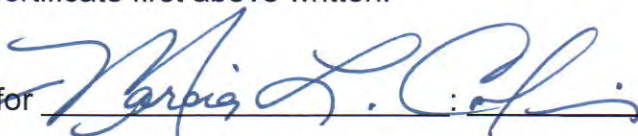
**United States Environmental Protection Agency**

Signature:   
Printed Name: Daniel D. Opalski  
Title: Director, Office of Environmental Cleanup, Region 10  
Date: 8/26/2010

State of Washington       )  
  ) ss.  
County of King               )

On this 26<sup>th</sup> day of AUGUST, in the year 2010, before me, a Notary Public in and for said County and State, personally appeared DANIEL D. OPALSKI, known or identified to me to be the DIRECTOR, OFFICE OF ENVIRONMENTAL CLEANUP of the United States Environmental Protection Agency that executed this Environmental Covenant, and acknowledged to me that the United States Environmental Protection Agency executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for   
Residing at: SEATTLE, WASHINGTON  
Commission Expires: 7/31/13



7/12

**Signature and Acknowledgments**

**Accepted:**

**FMC Idaho LLC**

Signature: \_\_\_\_\_

Printed Name: John T. Bartholomew

Title: President

Date: 8/9/2010

State of Pennsylvania )  
 ) ss.  
County of Philadelphia )

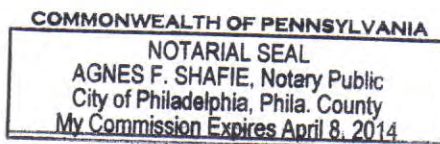
On this 9<sup>th</sup> day of August, in the year 2010, before me, a Notary Public in and for said County and State, personally appeared John T. Bartholomew, known or identified to me to be the President of FMC Idaho, LLC that executed this Environmental Covenant, and acknowledged to me that FMC Idaho LLC executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Agnes F. Shafie : \_\_\_\_\_

Residing at: FMC Corporation, 1735 Market Street, Philadelphia PA 19103

Commission Expires: April 8, 2014



8/12



## SCHEDULE A

A parcel of land located in the SW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$ , and in the SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ , and in US Government Lots 5 and 8, all in section 7, T6S, R34E, B.M., Power County, Idaho, more particularly described as follows:

Beginning at the Northeast corner of the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  of said section 7, said corner being marked by a found 5/8-inch diameter rebar with a 2-inch diameter aluminum cap stamped "PE/LS 4440";

Thence S  $0^{\circ}02'23''$  E along the meridional centerline of section 7, and along the West deed line of Parcel B, described in instrument #166781, 350.01 feet to the Southwest deed corner of said Parcel B, said point being marked by a found  $\frac{1}{2}$ -inch rebar with a yellow plastic cap stamped "PE/LS 4440";

Thence S  $89^{\circ}32'13''$  E parallel with the North  $\frac{1}{16}$  line of section 7, and along the South deed line of

Parcel B, 674.35 feet to the Northeast deed corner of Parcel C, described in instrument #166780, said point being marked by a found  $\frac{1}{2}$ -inch rebar with a yellow plastic cap stamped "PE/LS 4440";

Thence S  $24^{\circ}32'00''$  E along the Easterly deed line of said Parcel C, 81.90 feet to the Southwest deed corner of Parcel D, described in instrument #166781, said corner being marked by a found  $\frac{1}{2}$ -inch rebar with a yellow plastic cap stamped "PE/LS 4440";

Thence S  $71^{\circ}43'51''$  E along the Southerly deed line of said instrument #166781, 113.39 feet to the Southeast deed corner of said Parcel D, said corner being marked by a found  $\frac{1}{2}$ -inch rebar with a yellow plastic cap stamped "PE/LS 4440";

Thence N  $21^{\circ}03'32''$  E along the Easterly deed line of said Parcel D, and along the Westerly bank of the Portneuf River, 62.92 feet to a point on the South deed line of instrument #164682, said point being the Northeast deed corner of said Parcel D, and said point being marked by a found  $\frac{1}{2}$ -inch rebar with a yellow plastic cap stamped "PE/LS 4440";

Thence S  $89^{\circ}32'13''$  E along the South deed line of said instrument #164682, 82.69 feet to a point on the Easterly Bank of the Portneuf River, said point being on the Easterly deed line of instrument #164922, said point being marked by a set 5/8-inch diameter rebar with a yellow plastic cap stamped "PLS 4440";

Thence Southeasterly along the Easterly bank of the Portneuf River the following six courses and distances:

S  $3^{\circ}37'20''$  W, 359.02 feet; S  $6^{\circ}00'46''$  E, 120.27 feet; S  $21^{\circ}19'31''$  E, 48.04 feet;

S  $57^{\circ}01'20''$  E, 218.85 feet; S  $44^{\circ}19'16''$  E, 129.23 feet; S  $7^{\circ}50'22''$  E, 45.66 feet  
to a point on the Northerly line of the frontage road known as Batiste Lane, said point being marked by a set 5/8-inch diameter rebar with a yellow plastic cap stamped "PLS 4440";

Thence Westerly along said Northerly line of Batiste Lane the following eight courses and distances:

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S 86°45'14" W, 585.53 feet to a found State of Idaho right-of-way monument;  
Thence N 83°08'56" W, 150.65 feet to a found State of Idaho right-of-way monument;

Thence S 89°18'25" W, 376.93 feet to a point of tangency with a 1372.40 foot radius curve, said point being marked by a found State of Idaho right-of-way monument;

Thence Northwesterly along a curve to the right, said curve having a central angle of 23°42'44", a radius of 1372.40 feet and a chord bearing of N 78°50'13" W, for an arc length of 567.97 feet to a point of non-tangency, said point being marked by a found State of Idaho right-of-way monument;

Thence N 73°14'35" W, 181.45 feet to a found State of Idaho right-of-way monument;

Thence N 66°58'13" W, 444.69 feet to a point of tangency with a 326.48 foot radius curve, said point being marked by a found State of Idaho right-of-way monument;

Thence Westerly along a curve to the left, said curve having a central angle of 53°41'54", a radius of 326.48 feet and a chord bearing of S 86°10'50" W, for an arc length of 305.98 feet to a point of non-tangency, said point being marked by a found State of Idaho right-of-way monument;

Thence S 59°19'48" W, 16.83 feet to a point on the Easterly line of Tank Farm Road, said point being marked by a set 5/8-inch diameter rebar with an aluminum cap stamped "PLS 4440";

Thence Northerly along said Easterly line of Tank Farm Road the following four courses and distances:

N 30°40'10" W, 9.42 feet to a point of tangency with a 656.20 foot radius curve, said point being marked by a found State of Idaho right-of-way monument;

Thence Northwesterly along a curve to the right, said curve having a central angle of 31°17'50", a radius of 656.20 feet and a chord bearing of N 15°01'15" W, for an arc length of 358.44 feet to a point of non-tangency, said point being marked by a found State of Idaho right-of-way monument;

Thence N 0°38'07" E, 159.48 feet to a found State of Idaho right-of-way monument;

Thence N 1°48'24" W, 354.04 feet to a point on the Southerly line of Tank Farm Road, said point being marked by a found State of Idaho right-of-way monument;

Thence N 89°26'17" W, 88.72 feet to a point on the Westerly line of Tank Farm Road, said point being marked by a found State of Idaho right-of-way monument;

Thence Southerly along said Westerly line of Tank Farm Road the following five courses and distances:

S 2°55'58" W, 403.93 feet to a found State of Idaho right-of-way monument;

Thence S 0°26'27" E, 109.48 feet to a point of non-tangency with a 776.20 foot radius curve, said point being marked by a found State of Idaho right-of-way monument;

Thence Southeasterly along a curve to the left, said curve having a central angle of 31°15'29", a radius of 776.20 feet and a chord bearing of S 14°45'20" E, for an

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arc length of 423.46 feet to a point of non-tangency, said point being marked by a set 5/8-inch diameter rebar with an aluminum cap stamped "PLS 4440";

Thence S 30°40'42" E, 203.18 feet to a found State of Idaho right-of-way monument;

Thence S 0°17'17" E, 66.23 feet to a point on the North line of Interstate 86 (I-86), said point being marked by a found State of Idaho right-of-way monument;

Thence Westerly along said North line of I-86, the following three courses and distances:

S 77°10'00" W, 664.78 feet to a found State of Idaho right-of-way monument;

Thence S 89°19'20" W, 312.56 feet to a point of tangency with a 11,609.10 foot radius curve, said point being marked by a found State of Idaho right-of-way monument;

Thence Westerly along a curve to the left, said curve having a central angle of 2°27'18", a radius of 11,609.10 feet and a chord bearing of S 88°05'41" W, for an arc length of 497.42 feet to a point of non-tangency, said point being on the West line of section 7, and said point being marked by a set 5/8-inch diameter rebar with an aluminum cap stamped "PLS 4440";

Thence N 0°16'19" E along the West line of said section 7, 60.89 feet to the West ¼ corner of section 7, said corner being marked by a found 1-inch diameter pipe buried 2.5 feet deep with no markings;

Thence continuing N 0°14'06" E along the West line of said section 7, 1327.23 feet to the North 1/16 corner on the West line of section 7, said corner being marked by a set 5/8-inch diameter rebar with an aluminum cap stamped "PLS 4440";

Thence S 89°26'59" E along the North 1/16 line of section 7, 2803.14 feet to the true point of beginning.

Said parcel containing 92.3 acres, more or less.



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## **APPENDIX D**

### **DRAFT PLANNED ENVIRONMENTAL COVENANT AND EASEMENT**



Recording Requested By and  
When Recorded Return to:

---

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

**THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT IMPOSING  
ACTIVITY AND USE LIMITATIONS PURSUANT TO THE UNIFORM  
ENVIRONMENTAL COVENANTS ACT, IDAHO CODE § 55-3001, et seq.**

**ENVIRONMENTAL COVENANT**

FMC Idaho LLC ("FMC") as the owner of the Property described below grants this Environmental Covenant pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. FMC grants this Environmental Covenant to itself and its assigns as "holders" as defined at Idaho Code § 55-3002(6). This Environmental Covenant sets forth protective provisions, covenants, restrictions and conditions (collectively referred to as "Activity and Use Limitations") on the Property described below. The Activity and Use Limitations are designed to protect natural resources, human health and the environment. The U.S. Environmental Protection Agency ("EPA") and the Idaho Department of Environmental Quality (the "Department") are signing this Environmental Covenant as "agencies" as that term is defined in Idaho Code § 55-3002(2). The rights granted to EPA and the Department under UECA and this Environmental Covenant are not interests in real property and they are not "holders" under this Environmental Covenant.

Property. This Environmental Covenant concerns FMC-owned property located **<Specify RAs / Property subject to covenant>** in Power County, Idaho that is within the FMC Operable Unit of the Eastern Michaud Flats ("EMF") Superfund Site, a National Priorities List site under the federal Comprehensive Environmental Response, Compensation and Liability Act. The Property consists of **<Specify RAs / Property subject to covenant>** of the property conveyed to FMC under Instrument Number **<Insert instrument number(s) for underlying deed(s) affected by covenant>** as recorded in the Power County recorder's office, and is legally described in the attached **<insert survey plat of RAs / Property subject to covenant or boundary survey for Northern Properties subject to covenant>** (hereinafter referred to as the "Property").

Property Ownership. FMC hereby represents and warrants to the other signatories to this Environmental Covenant that it is the sole owner of the Property, holds fee simple title to the Property, and has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. EPA issued an Interim Record of Decision Amendment (“IRODA”) in September 2012 that selected interim remedial actions for the FMC Operable Unit of the EMF Superfund Site including the Property. The Activity and Use Restrictions set forth herein are consistent with the interim remedial action that EPA selected as set forth in the IRODA. This Environmental Covenant supports the remedial action objectives for the FMC OU.

Name and Location of Administrative Record. A copy of the administrative record for the EMF Superfund Site, which encompasses the Property, can be found at the Idaho State University Library, 921 South 8th Avenue, Pocatello, Idaho 83209.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, FMC and any successors in interest (i.e., future owners of the Property or any portion thereof) are hereby restricted from using the Property, now or at any time in the future, as specifically set forth below:

**<INSERT Activity and Use Limitations per Sections 3.2.1 and 3.2.2 of the Institutional Controls Implementation and Assurance Plan>**

FMC or its successors in interest shall be solely responsible for demonstrating that use on the Property is in conformity with the Activity and Use Limitations. If any event or action occurs that constitutes or may constitute a breach of the activity and use limitations, FMC or any successors in interest shall notify EPA and the Department within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by FMC or any successors in interest, EPA and the Department.

Amendment by Consent. This Environmental Covenant may be amended by consent pursuant to Idaho Code § 55-3010. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of the Environmental Covenant to a new holder is an amendment.

Duration and Termination. The Activity and Use Limitations shall apply to the Property, or any subdivided portion thereof, in perpetuity unless FMC or its successors in interest apply to EPA and the Department to have this Environmental Covenant terminated pursuant to Idaho Code § 55-3010 and demonstrate that contaminated soils and ground water are at levels the EPA and the Department deem in writing to be adequate for the Property, or any subdivided portion thereof, to be developed for unrestricted use.

Provisions to Run With the Land. Each and all of the Activity and Use Limitations shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Activity and Use Limitations are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property.

Concurrence of Subsequent Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property to be in accord with the foregoing and to agree for and among themselves, and their successors, that the Activity and Use Limitations as herein established must be adhered to and that their interest in the Property shall be subject to the Activity and Use Limitations contained herein.

Recording/ Filing of Environmental Covenant. This Environmental Covenant and any amendment or termination of the Environmental Covenant shall be recorded in the Power County recorder's office. This Environmental Covenant shall be recorded by FMC or its successors in interest within fifteen (15) days of receipt of this Environmental Covenant signed by all parties. Any amendment or termination shall be recorded by the owner at that time within fifteen (15) days of receipt of such amendment or termination signed by all parties. Within thirty (30) days of the recording of this Environmental Covenant or any amendment or termination, FMC, its successors in interest or the owner at the time of amendment or termination shall provide to EPA and the Department a copy of this recorded Environmental Covenant or any amendment or termination of this Environmental Covenant. Upon receipt of the copy of the recorded Environmental Covenant, and any amendment or termination, the Department shall post the copy of the fully executed instrument in the Registry as required by Idaho Code Section 55-3012(1). In addition, a copy of the recorded Environmental Covenant, or any amendment or termination, shall be provided by the owner at that time to the following persons: (a) each person that signed the Environmental Covenant; (b) each person holding a recorded interest in the Property; (c) each person in possession of the Property; (d) Power County; and (e) any other person as EPA or the Department may require. The validity of the Environmental Covenant is not affected by failure to provide a copy of the Environmental Covenant as required under this section.

Compliance Reporting. FMC, and/or any successors in interest, shall submit annually to the Department and EPA written documentation verifying that the activity and use limitations remain in place and compliance with the activity and use limitations.

Enforcement. EPA, the Department and any party to the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against the owner at the time of a violation of this Environmental Covenant and any other person then using the Property. Failure to comply with any of the Activity and Use Limitations set forth herein shall be grounds for EPA, the Department, or their successors, to require the owner at that time to correct or remove any violations of this Environmental Covenant. Violation of this Environmental Covenant shall be grounds for EPA, the Department or their successors to file civil actions against the owner at that time as provided by law or in

equity including, without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

Non-Waiver. No failure on the part of EPA, the Department or any holder at any time to require performance of any term of this Environmental Covenant shall be taken or held to be a waiver of such term or in any way affect the rights of EPA, the Department or any holder to enforce such term.

Property Access. EPA and the Department shall have a right of access to the Property at reasonable times for the purposes of evaluating compliance with this Environmental Covenant.

Notice of Conveyance of Property. Within thirty (30) days after the closing of any conveyance of the Property, or part thereof, the conveyor of the Property shall provide written notice to EPA, the Department and Power County regarding the name and address of all the then owners and/or occupants of the Property, or part thereof, conveyed. EPA and the Department shall not, by reason of this Environmental Covenant, have authority to approve, disapprove, or otherwise affect any conveyance of the Property except as otherwise provided by law.

Notices. All notices required or permitted to be given hereunder shall be in writing and mailed in the United States Mail, postage prepaid, by certified or registered mail, return receipt requested, to the appropriate address indicated below or at such other place or places as FMC or its successors, EPA or its successors, or the Department or its successors, may, from time to time, respectively, designate in a written notice given to the other parties. Notices that are deposited in the United States Mail in accordance with the terms of this provision shall be deemed received three (3) days after the date of mailing thereof.

FMC IDAHO LLC:	FMC Corporation <b><u>ATTN:</u></b> Barbara Ritchie Associate Director, Environmental 1735 Market Street Philadelphia, Pennsylvania 19103
EPA:	U.S. Environmental Protection Agency <b><u>ATTN:</u></b> Kevin Rochlin EMF Superfund Project Manager Office of Environmental Cleanup (ECL-113) 1200 Sixth Avenue Seattle, Washington 98101
THE DEPARTMENT:	Idaho Department of Environmental Quality <b><u>ATTN:</u></b> Joe Nagel 1410 N. Hilton Boise, Idaho 83706



Partial Invalidity. If any portion of the Environmental Covenant or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such invalidated portion had not been included herein.

Headings. Headings at the beginning of each section of this Environmental Covenant are solely for the convenience of the parties and are not a part of the Environmental Covenant.

Idaho Code References. All references to the Idaho Code sections include successor provisions.

Reservation of Rights. Notwithstanding any provision of this Environmental Covenant, EPA and the Department retain all of their access and enforcement authorities under any applicable statute or rule. Nothing in this Environmental Covenant shall affect the ability of EPA or the Department to enforce the terms of any consent decree or other agreement or order relating to remediation of the Property entered into between EPA and/or the Department, on the one hand, and FMC and/or other parties. Nothing in this Environmental Covenant shall affect the obligations of FMC or other parties under any consent decree or other agreement or order. Acceptance by EPA and the Department hereunder is based upon the information presently known or available to EPA and the Department with respect to the environmental condition of the Property, and EPA and the Department reserve the right to take appropriate action under applicable authorities in the event EPA or the Department determines that new information warrants such action.

Effective Date. The effective date of this instrument shall be the date the fully executed Environmental Covenant is recorded at the Power County recorder's office.

## Signature and Acknowledgments

**Accepted:**

**Idaho Department of Environmental Quality**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: Director, Idaho Department of Environmental Quality

Date: \_\_\_\_\_

State of Idaho                    )  
  ) ss.  
County of Ada                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, known or identified to me to be the Director of the Idaho Department of Environmental Quality that executed this Environmental Covenant, and acknowledged to me that the Idaho Department of Environmental Quality executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho: \_\_\_\_\_

Residing at: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

## Signature and Acknowledgments

**Accepted:**

**United States Environmental Protection Agency**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

State of Washington        )  
  ) ss.  
County of King                )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of the United States Environmental Protection Agency that executed this Environmental Covenant, and acknowledged to me that the United States Environmental Protection Agency executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for \_\_\_\_\_: \_\_\_\_\_

Residing at: \_\_\_\_\_

Commission Expires: \_\_\_\_\_





## **APPENDIX E**

### **DRAFT EXCAVATION AND FILL MANAGEMENT PLAN**

## **Draft Excavation and Fill Management Plan**

FMC Operable Unit of the Eastern Michaud Flats (“EMF”) Superfund Site

January 2015

As specified in the Environmental Covenant Imposing Activity and Use Restrictions (“Environmental Covenant”) recorded by FMC Corporation (“FMC”) on property it owns in Power County, Idaho within the FMC Operable Unit (“OU”) of the Eastern Michaud Flats (“EMF”) Superfund Site (the “Property”), any excavations occurring within Property areas covered by soil caps must comply with this Excavation and Fill Management Plan (“EFMP”). The Property areas that are covered by soil caps are identified below in this EFMP and shown on the attached survey plat figure.

The EMF Superfund Site is a National Priorities List site under the federal Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9601 et seq. This EFMP is a component of the Institutional Control Implementation and Assurance Plan (“ICIAP”) that FMC has developed and the United States Environmental Protection Agency (“EPA”) has approved to protect the integrity of the remedial actions that have been and will be implemented at the Property in accordance with the Interim Amendment to the Record of Decision for the EMF Superfund Site FMC Operable Unit (IRODA; EPA 2012a) that was issued by EPA Region 10 on September 27, 2012 and the Unilateral Administrative Order to FMC for Remedial Design and Remedial Action, EPA Docket No. CERCLA-10-2013-0116 (UAO; EPA 2013a), which became effective on June 20, 2013. The remedial actions that the IRODA and UAO require at the Property include the construction, monitoring and maintenance of caps over contaminated soils to prevent potential exposures and releases that could present unacceptable risks to human health or the environment.

### **Definitions**

**Entity:** An individual or company other than FMC that has an existing easement as of the date of the Environmental Covenant for access to and use of the Property, or that after such date acquires an easement or other legal interest after that date that provides the Entity a right to access and use the Property.

**Soil Caps:** There are two types of soil caps that have been constructed at the specific RAs within the Property. An evapotranspirative (ET) cap, consisting of a minimum of 30-inch thick soil cover above a 12-inch thick capillary break and screened slag layer, has been or will be constructed on Remediation Area (“RA”)-B, RA-C, RA-D, RA-E, RA-F1, RA-F2, RA-H and RA-K. A minimum 12-inch thick soil cover (gamma cap) has been or will be constructed on RA-A, RA-F (areas other than RA-F1 and RA-F2), and RA-G.

## **Prohibitions**

1. Excavation and other activities that could disturb the evapotranspirative (“ET”) soil caps constructed at Remediation Areas at the Property where elemental phosphorus is known or suspected to be present, specifically RA-B, RA-C, RA-F1, RA-F2 and RA-K, or activities that could disturb the material beneath the ET caps at those RAs, are strictly prohibited unless they are (1) authorized under an EPA-approved Operations, Maintenance and Monitoring (“OM&M”) Plan, (2) specifically directed by EPA, or (3) specifically approved by EPA under a project-specific EFMP.
2. Excavation and other activities that could disturb the ET soil caps at RA-D, RA-E or RD-H or the gamma caps at RA-A, RA-F (not including RA-F1 and RA-F2), and RA-G, or activities that could disturb the material beneath those ET and gamma caps, are strictly prohibited unless they are (1) authorized under an EPA-approved Operations, Maintenance and Monitoring (“OM&M”) Plan, (2) specifically required by EPA, (3) specifically approved by EPA under a project-specific EFMP, or (4) consistent with the criteria and procedures specified below in this EFMP.

### **CRITERIA AND PROCEDURES FOR BEING AUTHORIZED UNDER THIS EFMP TO CONDUCT EXCAVATION AND OTHER ACTIVITIES THAT COULD DISTURB THE SOIL CAPS AND UNDERLYING MATERIALS AT:**

- 1. THE ET CAPS AT RA-D, RA-E, AND RA-H, AND**
- 2. THE GAMMA CAPS AT RA-A, RA-F (NOT INCLUDING RA-F1 AND RA-F2) AND RA-G**

### **Pre-Excavation Requirements**

Prior to initiating any excavation or any activities that could disturb the soil covers and/or underlying material at the ET caps at RA-D, RA-E and RA-H or at the gamma caps at RA-A, RA-F (not including RA-F1 and RA-F2) and RA-G, the Entity will contact FMC and provide the following pre-excavation documentation:

1. Detailed description of the planned excavation activities including a statement of the purpose of the excavation (e.g., underground utilities, building foundation, etc.), drawing(s), specifications (e.g., depth of excavation, fill compaction requirements, etc.), planned project resources (e.g., heavy equipment, manpower) and an intended schedule for the work.
2. A Health and Safety Plan (“HASP”) consistent with federal Occupational Safety and Health Act (“OSHA”) requirements for the Entity’s project.

FMC will consult with and assist the Entity in its preparation of a project-specific EFMP consistent with the procedures described below. FMC will also provide the Entity with the final specifications and construction quality assurance (“CQA”) requirements for the affected soil caps. The Entity’s project-specific EFMP will describe the methods and procedures to assure that the affected soil caps are reconstructed to the same specifications and quality as originally installed. FMC will review and as appropriate approve the Entity’s project-specific EFMP. FMC reserves the right to require modification to or reject the Entity’s project-specific EFMP until FMC is satisfied that following completion of the project the affected cap(s) will be restored to a condition that meets the cap performance standards specified in the IRODA and UAO. The Entity may not commence the project field work until FMC has approved the project-specific EFMP.

### **Excavation and Fill Management Procedures**

For most projects, the excavation and fill management is expected to follow these procedures:

1. Remove soil cap selectively and without excavating into or comingling with underlying fill, and stockpile soil on the surface of the cap surface adjacent to the excavation.
2. If the excavation is in an area covered with an ET cap, remove the soil cap, capillary break, and screened slag layer material (consisting primarily of slag). Establish a location(s) to keep the capillary break material separated from the cap soil. The capillary break and screened slag material must not be left on the surface or comingled with the cap soil material. Measures that may assist in accomplishing this may include placement of heavy geofabric adjacent to the excavation, or utilization of containers (bins or dump trucks).
3. Establish a location(s) to keep the site fill (excavated from beneath the soil cap) separated from the cap soil. Placement of heavy geofabric adjacent to the excavation or utilization of containers (bins or dump trucks) may assist with this process.
4. Install the underground utility (e.g., power line, pipeline) or perform other planned activities in accordance with the Entity’s specifications and plans.
5. Place and compact removed underlying fill material to the original elevation within the excavated area (or trench). This will typically be accomplished by placing the “last out” material as the “first in” during backfill.
6. Any excess fill materials will be placed at a location on the property as directed by FMC. FMC anticipates that one or more areas may be designated, depending on the volume of excess fill material. FMC will direct the Entity regarding management of the excess material once placed at the designated location(s). In general, the excess material will be



capped by the same type of soil cap at the designated location(s) as was removed during the project.

7. If the excavation is in an area covered with an ET cap, place and compact the screen slag material first and then capillary break material to the original layer elevations within the excavated area (or trench).
8. Place and compact the soil cover layer material to the original design grade and specifications.
9. Re-seed with seed mix prescribed in the specifications or other EPA-approved plan.

The procedures identified above will apply to most projects, but might not be relevant or applicable to all potential projects. The Entity may develop modified procedures in its project-specific EFMP.